

2012

# THREE STRIKES LAW. REPEAT FELONY OFFENDERS. PENALTIES.

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**THREE STRIKES LAW. REPEAT FELONY OFFENDERS. PENALTIES. INITIATIVE STATUTE.**

- Revises three strikes law to impose life sentence only when new felony conviction is serious or violent.
- Authorizes re-sentencing for offenders currently serving life sentences if third strike conviction was not serious or violent and judge determines sentence does not pose unreasonable risk to public safety.
- Continues to impose life sentence penalty if third strike conviction was for certain nonserious, non-violent sex or drug offenses or involved firearm possession.
- Maintains life sentence penalty for felons with nonserious, non-violent third strike if prior convictions were for rape, murder, or child molestation.

**Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:**

- State savings related to prison and parole operations of \$70 million annually on an ongoing basis, with even higher savings—up to \$90 million annually—over the next couple of decades. These estimates could be higher or lower by tens of millions of dollars depending on future state actions.
- One-time state and county costs of a few million dollars over the next couple of years for court activities related to the resentencing of certain offenders.

**ANALYSIS BY THE LEGISLATIVE ANALYST**

**BACKGROUND**

There are three categories of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime, and an individual convicted of a felony may be sentenced to state prison under certain circumstances. Individuals convicted of felonies who are not sentenced to state prison are sentenced to county jail, supervised by the county probation department in the community, or both.

Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as violent include murder, robbery, and rape. While almost all violent felonies are also considered serious, other felonies are defined only as serious, such as assault with intent to commit robbery. Felonies that are not classified as violent or serious include grand theft (not involving a firearm) and possession of a controlled substance.

As of May 2012, there were about 137,000 inmates in the California prison system. The

state’s prison system in 2012–13 is budgeted for almost \$9 billion.

**Three Strikes Sentencing.** Proposition 184 (commonly referred to as the “three strikes” law) was adopted by voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, the law requires that a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- **Second Strike Offense.** If the person has *one previous* serious or violent felony conviction, the sentence for *any new* felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are referred to as “second strikers.” As of March 2012, about 33,000 inmates were second strikers.

- **Third Strike Offense.** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is a life term with the earliest possible parole after 25 years. Offenders convicted under this provision are referred to as “third strikers.” As of March 2012, about 9,000 inmates were third strikers.

While the law requires the sentences described above, in some instances the court may choose not to consider prior felonies during sentencing. When this occurs, an offender who would otherwise be sentenced as a second or third striker would be sentenced to a lesser term than required under the three strikes law.

**Prison Release Determination.** Under current law, most second strikers are automatically released from prison after completing their sentences. In contrast, third strikers are only released upon approval by the state Board of Parole Hearings (BPH). After third strikers have served the minimum number of years required by their sentence, a BPH panel conducts a parole consideration hearing to consider their possible release. For example, BPH would conduct such a hearing for a third striker sentenced to 25-years-to-life after the third striker served 25 years. If BPH decides not to release the third striker at that hearing, the board would conduct a subsequent hearing in the future. Since the three strikes law came into effect in 1994, the first third strikers will become eligible for hearings on their possible release from prison near the end of this decade.

**Post Release Supervision.** All second and third strikers are required under current law to be supervised in the community after release from prison. If a second striker’s most recent conviction was for a nonserious, non-violent crime, he or she will generally be supervised in the community by

county probation officers. Otherwise, the second striker will be supervised in the community by state parole agents. All third strikers are supervised in the community by state parole agents following their release. When second or third strikers violate the terms of their community supervision or commit a new offense, they could be placed in county jail or state prison depending on the circumstances.

## PROPOSAL

This measure reduces prison sentences served under the three strikes law by certain third strikers whose current offenses are nonserious, non-violent felonies. The measure also allows resentencing of certain third strikers who are currently serving life sentences for specified nonserious, non-violent felonies. Both of these changes are described below.

**Shorter Sentences for Some Third Strikers.** The measure requires that an offender who has *two or more prior* serious or violent felony convictions and whose *new* offense is a nonserious, non-violent felony receive a prison sentence that is twice the usual term for the new offense, rather than a minimum sentence of 25-years-to-life as is currently required. For example, a third striker who is convicted of a crime in which the usual sentence is two to four years would instead receive a sentence of between four to eight years—twice the term that would otherwise apply—rather than a 25-years-to-life term.

The measure, however, provides for some exceptions to these shorter sentences. Specifically, the measure requires that if the offender has committed certain new or prior offenses, including some drug-, sex-, and gun-related felonies, he or she would still be subject to a life sentence under the three strikes law.

**Resentencing of Some Current Third Strikers.** This measure allows certain third strikers to apply to be resentenced by the courts. The measure limits eligibility for resentencing to third strikers whose current offense is nonserious, non-violent and who have not committed specified current and prior offenses, such as certain drug-, sex-, and gun-related felonies. Courts conducting these resentencing hearings would first determine whether the offender's criminal offense history makes them eligible for resentencing. The court would be required to resentence eligible offenders unless it determines that resentencing the offenders would pose an unreasonable risk to public safety. In determining whether an offender poses such a risk, the court could consider any evidence it determines is relevant, such as the offender's criminal history, behavior in prison, and participation in rehabilitation programs. The measure requires resented offenders to receive twice the usual term for their most recent offense instead of the sentence previously imposed. Offenders whose requests for resentencing are denied by the courts would continue to serve out their life terms as they were originally sentenced.

### FISCAL EFFECTS

**State Correctional Savings.** This measure would have a number of fiscal impacts on the state's correctional system. Most significantly, the measure would reduce state prison costs in two ways. First, fewer inmates would be incarcerated for life sentences under the three strikes law because of the measure's provisions requiring that such sentences be applied only to third strikers whose current offense is serious or violent. This would reduce the sentences of some future felony offenders. Second, the resentencing of third

strikers could result in many existing inmates receiving shorter prison terms. This would result in a reduction in the inmate population beginning in the near term.

The measure would also result in reduced state parole costs. This would occur because the offenders affected by this measure would generally be supervised by county probation—rather than state parole—following their release from prison. This is because their current offense would be nonserious and non-violent. In addition, the reduction in the third striker population would reduce the number of parole consideration hearings BPH would need to conduct in the future.

State correctional savings from the above changes would likely be around \$70 million annually, with even higher savings—up to \$90 million annually—over the next couple of decades. However, these annual savings could be tens of millions of dollars higher or lower depending on several factors. In particular, the actual level of savings would depend on the number of third strikers resented by the court and the rate at which BPH would have released third strikers in the future under current law.

**Resentencing Costs.** This measure would result in a one-time cost to the state and counties related to the resentencing provisions of this measure. These provisions would increase court caseloads, which would result in added costs for district attorneys, public defenders, and county sheriff's departments that would manage this workload and staff these resentencing proceedings. In addition, counties would incur jail costs to house inmates during resentencing proceedings. These costs could be a few million dollars statewide over a couple of years.

***Other Fiscal Impacts.*** There would be some additional court-, probation-, and jail-related costs for the state and counties. This is because some offenders released from prison due to this measure would be supervised by probation departments instead of state parole, and would have court hearings and receive jail sentences if they violate the terms of their supervision or commit new crimes. We estimate that such long-term costs would not be significant.

This measure could result in a variety of other state and local government fiscal effects. For

instance, governments would incur additional costs to the extent that offenders released from prison because of this measure require government services (such as government-paid health care for persons without private insurance coverage) or commit additional crimes. There also would be some additional state and local government revenue to the extent that offenders released from prison because of this measure entered the workforce. The magnitude of these impacts is unknown.

★ ARGUMENT IN FAVOR OF PROPOSITION 36 ★

The Three Strikes Reform Act, Proposition 36, is supported by a broad bipartisan coalition of law enforcement leaders, civil rights organizations and taxpayer advocates because it will:

• **MAKE THE PUNISHMENT FIT THE CRIME**

Precious financial and law enforcement resources should not be improperly diverted to impose life sentences for some non-violent offenses. Prop. 36 will assure that violent repeat offenders are punished and not released early.

• **SAVE CALIFORNIA OVER \$100 MILLION EVERY YEAR**

Taxpayers could save over \$100 million per year—money that can be used to fund schools, fight crime and reduce the state’s deficit. The Three Strikes law will continue to punish dangerous career criminals who commit serious violent crimes—keeping them off the streets for 25 years to life.

• **MAKE ROOM IN PRISON FOR DANGEROUS FELONS**

Prop. 36 will help stop clogging overcrowded prisons with non-violent offenders, so we have room to keep violent felons off the streets.

• **LAW ENFORCEMENT SUPPORT**

Prosecutors, judges and police officers support Prop. 36 because Prop. 36 helps ensure that prisons can keep dangerous criminals behind bars for life. Prop. 36 will keep dangerous criminals off the streets.

• **TAXPAYER SUPPORT**

Prop. 36 could save \$100 million every year. Grover Norquist, President of Americans for Tax Reform says, “The Three Strikes Reform Act is tough on crime without being tough on taxpayers. It will put a stop to needlessly wasting hundreds of millions in taxpayers’ hard-earned money, while protecting

people from violent crime.” The California State Auditor projects that taxpayers will pay millions to house and pay health care costs for non-violent Three Strikes inmates if the law is not changed. Prop. 36 will save taxpayers’ money.

• **TOUGH AND SMART ON CRIME**

Criminal justice experts and law enforcement leaders carefully crafted Prop. 36 so that truly dangerous criminals will receive no benefits whatsoever from the reform. Repeat criminals will get life in prison for serious or violent third strike crimes. Repeat offenders of non-violent crimes will get more than double the ordinary sentence. Any defendant who has ever been convicted of an extremely violent crime—such as rape, murder, or child molestation—will receive a 25 to life sentence, no matter how minor their third strike offense.

*JOIN US*

With the passage of Prop. 36, California will retain the toughest recidivist Three Strikes law in the country but will be fairer by emphasizing proportionality in sentencing and will provide for more evenhanded application of this important law.

Please join us by Voting Yes on Proposition 36.

Learn more at [www.FixThreeStrikes.org](http://www.FixThreeStrikes.org)

**STEVE COOLEY**, District Attorney  
Los Angeles County

**GEORGE GASCON**, District Attorney  
San Francisco City and County

**DAVID MILLS**, Professor  
Stanford Law School

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 36 ★

HERE’S WHAT THE SUPPORTERS OF PROPOSITION 36 DON’T TELL YOU:

- A hidden provision in 36 will allow thousands of dangerous criminals to get their prison sentence REDUCED and then RELEASED FROM PRISON early. According to the Fresno Bee:

*“If Proposition 36 passes, about 3,000 convicted felons serving life terms under Three Strikes could petition for a reduced sentence . . . .”*

- Some of these dangerous criminals will be released WITHOUT STATE PAROLE OR ANY LAW ENFORCEMENT SUPERVISION. According to the Independent Legislative Analyst:

*“Third strikers who are resentenced under this measure would become eligible for county community supervision upon their release from prison, rather than state parole . . . some of them could be released from prison without community supervision.”*

- **PROPOSITION 36 IS TOTALLY UNNECESSARY.** Prosecutors and judges already have the power to implement Three Strikes fairly. Here’s what the President of the District Attorneys Association says:

*“Judges and Prosecutors don’t need Proposition 36. In fact, it reduces our ability to use Three Strikes to target dangerous repeat felons and get them off the streets once and for all.”*

- **36 IS OPPOSED BY EVERY MAJOR LAW ENFORCEMENT ORGANIZATION AND VICTIM RIGHTS GROUP**, including those representing California police chiefs, sheriffs, prosecutors, and police officers. Note that the supporters of 36 can’t name a single law enforcement organization on their side!
- **36 WON’T REDUCE TAXES.** Government doesn’t spend too much fighting crime. It spends too little. More crime costs taxpayers too!

We urge you to SAVE Three Strikes. Please Vote NO on 36.

**CHIEF RICK BRAZIEL**, President  
California Peace Officers Association

**HENRY T. NICHOLAS, III, Ph.D.**, Author  
California’s Victims Bill of Rights

**CHRISTINE WARD**, Executive Director  
Crime Victims Action Alliance

★ **ARGUMENT AGAINST PROPOSITION 36** ★

In 1994 voters overwhelmingly passed the Three Strikes law—a law that increased prison sentences for repeat felons. And it worked! Almost immediately, our state’s crime rate plummeted and has remained low, even during the current recession. The reason is pretty simple. The same criminals were committing most of the crime—cycling through our courts and jails—over and over again. The voters said enough—Three Strikes and You’re Out!

In 2004, the ACLU and other opponents of tough criminal laws tried to change Three Strikes. The voters said NO. Now they are back again with Proposition 36. They couldn’t fool us last time and they won’t fool us this time.

Just like before, Proposition 36 allows dangerous criminals to get their prison sentence REDUCED and then RELEASED FROM PRISON! So who does Proposition 36 apply to?

- Criminals so dangerous to society that a District Attorney chose to charge them with a Three Strike offense;
- Criminals so dangerous that a Judge agreed with DA’s decision to charge;
- Criminals so dangerous that a jury convicted them of that offense;
- Criminals so dangerous that a Judge imposed a 25-to-life prison sentence; and
- Criminals whose legal appeals were denied.

After all that, Proposition 36 would let those same criminals ask a DIFFERENT Judge to set them free. Worse yet, some of these criminals will be released from prison WITHOUT PAROLE OR ANY SUPERVISION!

Here’s what the Independent Legislative Analyst says about the early release of some prisoners under Proposition 36: *“Some of them could be released from prison without community supervision.”*

No wonder Proposition 36 is OPPOSED by California Police, Sheriff’s and law enforcement groups, including:  
California Police Chiefs Association

California State Sheriff’s Association  
California District Attorneys Association  
Peace Officers Research Association of California  
Los Angeles Police Protective League

What do you think these newly released hardened criminals will do once they get out of prison? We already know the answer to that: They will commit more crimes, harm or kill more innocent victims, and ultimately end up right where they are today—back in prison. All of this will cost taxpayers more than keeping them behind bars right where they belong.

No wonder Proposition 36 is opposed by victim rights groups, including:

Crime Victims United of California  
Crime Victim Action Alliance  
Citizens Against Homicide  
Criminal Justice Legal Foundation

At the time Three Strikes was approved by the voters, some thought it might be too harsh or too costly. Voters rejected that view in 2004. But even if you believe that the Three Strikes law should be reformed, Proposition 36 is not the answer. Any change to the sentencing laws should only apply to future crimes committed—it should not apply to criminals already behind bars—cutting their sentences short. It is simply not fair to the victims of crime to have to relive the pain of resentencing and early release of these dangerous criminals. We kindly ask you to VOTE NO ON PROPOSITION 36.

[www.save3strikes.com](http://www.save3strikes.com)

**SHERIFF KEITH ROYAL**, President  
California State Sheriff’s Association  
**DISTRICT ATTORNEY CARL ADAMS**, President  
California District Attorneys Association  
**HARRIET SALERNO**, President  
Crime Victims United of California

★ **REBUTTAL TO ARGUMENT AGAINST PROPOSITION 36** ★

Don’t believe the scare tactics used by opponents of Prop. 36. Here are the facts:

- Prop. 36 requires that murderers, rapists, child molesters, and other dangerous criminals *serve their full sentences*.
- Prop. 36 *saves taxpayers hundreds of millions of dollars*.
- Prop. 36 *still punishes repeat offenders* of nonviolent crimes by doubling their state prison sentences.

Today, dangerous criminals are being released early from prison because jails are overcrowded with nonviolent offenders who pose no risk to the public. Prop. 36 prevents dangerous criminals from being released early. People convicted of shoplifting a pair of socks, stealing bread or baby formula don’t deserve life sentences.

Prop. 36 is supported by law enforcement leaders, including:

- Steve Cooley, District Attorney of Los Angeles County
- Jeffrey Rosen, District Attorney of Santa Clara County

- George Gascon, District Attorney of San Francisco City and County
  - Charlie Beck, Chief of Police of Los Angeles
- They know that Prop. 36:
- *Requires:* Life sentences for dangerous criminals who commit serious and violent crimes.
  - *Makes the Punishment Fit the Crime:* Stop wasting valuable police and prison resources on nonviolent offenders.
  - *Saves Over \$100 Million Every Year.*

**STEVE COOLEY**, District Attorney  
Los Angeles County  
**JEFFREY F. ROSEN**, District Attorney  
Santa Clara County  
**CHARLIE BECK**  
Chief of Police of Los Angeles

determine in what ways human trafficking training may be included as a part of ongoing programs.

~~(e) Participation in the course or courses specified in this section by peace officers or the agencies employing them is voluntary~~ *Every law enforcement officer who is assigned field or investigative duties shall complete a minimum of two hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014, or within six months of being assigned to that position, whichever is later.*

SEC. 15. Amendments.

This act may be amended by a statute in furtherance of its objectives passed in each house of the Legislature by rollcall vote entered in the journal, a majority of the membership of each house concurring.

SEC. 16. Severability.

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

**PROPOSITION 36**

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED LAW**

THREE STRIKES REFORM ACT OF 2012

SECTION 1. Findings and Declarations:

The People enact the Three Strikes Reform Act of 2012 to restore the original intent of California’s Three Strikes law—imposing life sentences for dangerous criminals like rapists, murderers, and child molesters.

This act will:

(1) Require that murderers, rapists, and child molesters serve their full sentences—they will receive life sentences, even if they are convicted of a new minor third strike crime.

(2) Restore the Three Strikes law to the public’s original understanding by requiring life sentences only when a defendant’s current conviction is for a violent or serious crime.

(3) Maintain that repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession will receive twice the normal sentence instead of a life sentence.

(4) Save hundreds of millions of taxpayer dollars every year for at least 10 years. The state will no longer pay for housing or long-term health care for elderly, low-risk, non-violent inmates serving life sentences for minor crimes.

(5) Prevent the early release of dangerous criminals who are currently being released early because jails and prisons are overcrowded with low-risk, non-violent inmates serving life

sentences for petty crimes.

SEC. 2. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious 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 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 *one or more* 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 *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 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

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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 *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. 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:

(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—~~A shall constitute a prior conviction of a particular *serious and/or violent* felony shall include a if the prior conviction in another the other jurisdiction is for an offense that includes all of the elements of the 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 a *one or more* prior *serious and/or violent* felony conviction 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) ~~If~~ *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 ~~greater~~ *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.

(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 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 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 Sections 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 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 in 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.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a *one or more* prior serious and/or violent felony conviction as defined in subdivision (d). 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 they existed on ~~June 30, 1993~~ November 7, 2012.

(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.

SEC. 3. Section 667.1 of the Penal Code is amended to read:

667.1. Notwithstanding subdivision (h) of Section 667, for

all offenses committed on or after the effective date of this act November 7, 2012, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by the act enacted during the 2005–06 Regular Session that amended this section November 7, 2012.

SEC. 4. Section 1170.12 of the Penal Code is amended to read:

1170.12. ~~(a) Aggregate and consecutive terms for multiple convictions; Prior conviction as prior felony; Commitment and other enhancements or punishment.~~

(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), 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 ~~paragraph (6) of this 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.

~~(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 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. 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* conviction is 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 shall include a if the prior conviction in another 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 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 *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 a *one or more* prior *serious and/or violent* felony ~~conviction~~ 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) ~~If~~ *Except as provided in subparagraph (C), if* a defendant has two or more prior *serious and/or violent* felony convictions, as defined in ~~paragraph (1)~~ 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* ~~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 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 (e) 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 in 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 in 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 a one or more prior serious and/or violent felony conviction convictions as defined in this section. 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 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 (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 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.

SEC. 5. Section 1170.125 of the Penal Code is amended to read:

1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, ~~general election~~ General Election, for all offenses committed on or after ~~the effective date of this act~~ November 7, 2012, all references to existing statutes in ~~Section~~ Sections 1170.12 and 1170.126 are to those statutes sections as they existed on the effective date of this act, including amendments made to those statutes by the act enacted during the 2005–06 Regular Session that amended this section November 7, 2012.

SEC. 6. Section 1170.126 is added to the Penal Code, to read:

1170.126. (a) The resentencing provisions under this section and related statutes are intended to apply exclusively to persons presently serving an indeterminate term of imprisonment pursuant 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.

(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 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 provisions of subdivision (e) of Section 667, and subdivision (c) of Section 1170.12, as those statutes have been amended by the act that added this section.

(c) No 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 or paragraph (1) of subdivision (c) of Section 1170.12, 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 a conviction of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

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

(3) The inmate has no prior convictions for any of the offenses appearing in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clause (iv) of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.

(f) Upon receiving a petition for recall of sentence under this section, the court shall determine whether the petitioner satisfies the criteria in subdivision (e). If the petitioner satisfies the criteria in subdivision (e), the petitioner shall be resentenced pursuant to paragraph (1) of subdivision (e) of Section 667 and paragraph (1) of subdivision (c) of Section 1170.12 unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.

(g) In exercising its discretion in subdivision (f), the court may consider:

(1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes;

(2) *The petitioner’s disciplinary record and record of rehabilitation while incarcerated; and*

(3) *Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.*

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

(i) *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.*

(j) *If the court that originally sentenced the defendant is not available to resentence the defendant, the presiding judge shall designate another judge to rule on the defendant’s petition.*

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

(l) *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.*

(m) *A resentencing hearing ordered under this act shall constitute a “post-conviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).*

**SEC. 7. 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.*

**SEC. 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.*

**SEC. 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 law.*

**SEC. 10. Effective Date:**

*This act shall become effective on the first day after enactment by the voters.*

**SEC. 11. Amendment:**

*Except as otherwise provided in the text of the statutes, the provisions of this act shall not be altered or amended except by one of the following:*

(a) *By statute passed in each house of the Legislature, by rollcall entered in the journal, with two-thirds of the membership and the Governor concurring; or*

(b) *By statute passed in each house of the Legislature, by*

*rollcall vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot and approved by a majority of the electors; or*

(c) *By statute that becomes effective when approved by a majority of the electors.*

**PROPOSITION 37**

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure amends and adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED LAW**

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

THE CALIFORNIA RIGHT TO KNOW GENETICALLY  
ENGINEERED FOOD ACT

SECTION 1. FINDINGS AND DECLARATIONS

(a) California consumers have the right to know whether the foods they purchase were produced using genetic engineering. Genetic engineering of plants and animals often causes unintended consequences. Manipulating genes and inserting them into organisms is an imprecise process. The results are not always predictable or controllable, and they can lead to adverse health or environmental consequences.

(b) Government scientists have stated that the artificial insertion of DNA into plants, a technique unique to genetic engineering, can cause a variety of significant problems with plant foods. Such genetic engineering can increase the levels of known toxicants in foods and introduce new toxicants and health concerns.

(c) Mandatory identification of foods produced through genetic engineering can provide a critical method for tracking the potential health effects of eating genetically engineered foods.

(d) No federal or California law requires that food producers identify whether foods were produced using genetic engineering. At the same time, the U.S. Food and Drug Administration does not require safety studies of such foods. Unless these foods contain a known allergen, the FDA does not even require developers of genetically engineered crops to consult with the agency.

(e) Polls consistently show that more than 90 percent of the public want to know if their food was produced using genetic engineering.

(f) Fifty countries—including the European Union member states, Japan and other key U.S. trading partners—have laws mandating disclosure of genetically engineered foods. No international agreements prohibit the mandatory identification of foods produced through genetic engineering.

(g) Without disclosure, consumers of genetically engineered food can unknowingly violate their own dietary and religious restrictions.

(h) The cultivation of genetically engineered crops can also cause serious impacts to the environment. For example, most genetically engineered crops are designed to withstand weed-

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