

4-13-1974

## Mandatory Sentencing Initiative

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OFFICE OF THE ATTORNEY GENERAL

**Department of Justice**

555 CAPITOL MALL, SUITE 550  
SACRAMENTO 95814

**FILED**

In the office of the Secretary of State  
of the State of California

APR 10 1974

EDMUND G. CROWN Jr., Secretary of State

By *Cashmere M. Apperson*  
Deputy Secretary of State

April 10, 1974

Honorable Edmund G. Brown, Jr.  
Secretary of State  
117 State Capitol  
Sacramento, California 95814

Re: Mandatory Sentencing Initiative

Dear Mr. Brown:

Pursuant to the provisions of section 3507 of the Elections Code, you are hereby informed that on this day we mailed to Wesley R. Barrett, as proponent, the following title and summary:

PROBATION PROHIBITED FOR CERTAIN PERSONS.  
INITIATIVE. Amends Penal Code to prohibit granting probation to: (1) Persons using a firearm during attempt or commission of specified crimes; (2) persons previously convicted of specified felonies who commit subsequent felony while armed with firearm or who are unlawfully armed at time of arrest for subsequent offense; (3) persons convicted of specified crimes relating to selling or offering to sell or possession for sale of heroin or cocaine; (4) persons convicted of certain burglaries who have two or more prior convictions for burglary. Measure can be amended or repealed by 2/3 vote of Legislature. If the proposed initiative is adopted, undefined additional financing from state sources to cover operating expenses will be required in the approximate amounts of: \$7,300,000 in first year; \$10,200,000 in second year; \$12,100,000 in third year; and \$14,100,000 in fourth year. Depending on future sentencing and parole practices, additional financing from state sources may be required for added prison facilities.

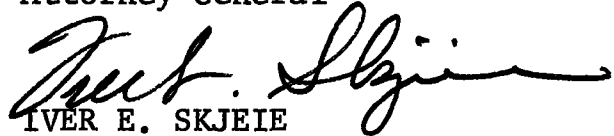
Honorable Edmund G. Brown, Jr. -2-

April 10, 1974

Enclosed herewith is a declaration of mailing thereof, and a copy of the proposed measure.

Very truly yours,

EVELLE J. YOUNGER  
Attorney General

A handwritten signature in cursive script, appearing to read "Iver E. Skjeie", written in black ink.

IVER E. SKJEIE  
Assistant Attorney General

IES:eg  
Enclosures

DECLARATION OF SERVICE BY MAIL

I, Elva Gonsalves, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 555 Capitol Mall, Suite 550 Sacramento, California, 95814.

On April 10, 1974, I served the attached

Letter to Secretary of State dated  
April 10, 1974 re: Mandatory Sentencing  
Initiative,

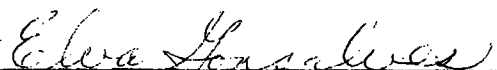
by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Wesley R. Barrett  
5181 V. E. Avenue  
Oroville, California 95965

Wesley R. Barrett, President  
California Peace Officers Assn.  
Suite 800, Forum Building  
Sacramento, California 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 10, 1974, at Sacramento,  
California.

  
\_\_\_\_\_  
Declarant

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE ELECTORS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the Title and Summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified electors of the State of California, residents of \_\_\_\_\_ County (or City and County) present to the Secretary of State this petition proposing to amend Section 1203 of the Penal Code, relating to probation, and petition that the same be submitted to the electors of the State of California for their adoption or rejection at the next succeeding general election or as provided by law. The following is a full and correct copy of the title and text of the proposed measure:

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

Section 1. Section 1203 of the Penal Code is amended to read:  
1203. (a) In every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court at a specified time upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his findings and recommendations including his recommendations as to the granting or denying of probation and the conditions of probation if granted. The report shall be made available to the court and the prosecuting and defense attorneys at least two days or, upon the request of the person, five days prior to the time fixed by the court for the hearing, and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorney which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be subserved by granting probation to the person, it may place him on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(b) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to

discuss its contents with the defendant.

(c) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily grant or deny probation. If such a case is not referred to the probation officer in sentencing the person the court may consider any information concerning him which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him to answer or controvert it. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

~~(d) Except in unusual cases where the interests of justice demand a departure, probation shall not be granted to any of the following persons:~~

~~(1) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of the crime or his arrest, any person who has been convicted of robbery, burglary, or arson and was armed with such weapon at either of such times.~~

~~(2) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.~~

(d) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

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

(i) Murder.

(ii) Assault with intent to commit murder in violation of Section 217.

(iii) Robbery, in violation of Section 211.

(iv) Kidnapping, in violation of Section 207.

(v) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

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

(vii) Rape by force or violence, in violation of subdivision (2) of Section 261.

(viii) Rape by threat of great and immediate bodily harm in violation of subdivision (3) of Section 261.

(ix) Assault with intent to commit rape, the infamous crime against nature, or robbery, in violation of Section 220.

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

(2) Any person previously convicted of a felony specified in subparagraphs (i) through (x) of paragraph (1), who is convicted of a subsequent felony and who was armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his arrest for the subsequent felony.

(3) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale heroin or cocaine.

(4) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell heroin or cocaine.

(5) Any person who is convicted of burglary of an inhabited dwelling house, or trailer or of any burglary of the first degree, and who on charges separately brought and tried in this state or elsewhere, has two or more prior convictions for burglary in the first or second degree.

(e)(1) The existence of any fact which would make a person ineligible for probation under subdivision (d) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

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

(3) As used in subdivision (d) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (d) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

~~(e)~~ (f) Except in unusual cases where the interests of justice would best be served if the person is granted probation, ~~and where the district attorney consents~~, probation shall not be granted to any of the following persons:

(1) Unless he had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his arrest any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of such crimes and was armed with such weapon at either of such times.

(2) Any person who used or attempted to use a deadly weapon, other than a firearm, upon a human being in connection with the perpetration of the crime of which he has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state would have been punishable as a felony.

(5) Unless he has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of such crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he committed any of the following acts:

(i) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of such previous crime or his arrest for such previous crime, he was armed with such weapon at either of such times.

(ii) He used or attempted to use a deadly weapon upon a human being in connection with the perpetration of such previous crime.

(iii) He willfully inflicted great bodily injury or torture in the perpetration of such previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who in the discharge of the duties of his public office or employment, accepted or gave or offered to accept or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) When probation is granted in a case which comes within the provisions of this subdivision, the court shall specify the circumstances indicating that the interests of justice would best be served by such disposition.

~~(f)~~ (g) If a person is not eligible for probation, the judge may, in his discretion, refer the matter to the probation officer for an investigation of the facts relevant to the sentencing of the person. Upon such referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his findings.

~~(g)~~ (h) No probationer shall be released to enter another state unless his case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article (commencing with Section 11175) of Chapter 2 of Title 1 Part 4).

Sec. 2. The Legislature may amend or repeal any part of Section 1203 of the Penal Code, as amended by Section 1 of this initiative, by another statute passed by a two-thirds vote of all the members elected to each of the two houses of the Legislature, and signed into law by the Governor, without approval of the electors.



April 10, 1974

TO THE REGISTRARS OF VOTERS AND COUNTY CLERKS:

Pursuant to Section 3507 of the Elections Code, there is transmitted herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

MANDATORY SENTENCING INITIATIVE

Circulating and Filing Schedule:

1. Minimum number of signatures required . . . . . 325,504  
Constitution IV, 22(b).
2. Official Summary Date . . . . . 4/10/74  
Elections Code Section 3507.
3. Petition Sections:
  - a. First day Proponent can circulate sections for  
signatures . . . . . 4/10/74  
Elections Code Section 3507.
  - b. Proponent may file petition sections with the Registrar  
of Voters at any time, and at as many times as he wishes  
during the 150 day period. The Registrar of Voters must  
determine within 30 days of any filing the number of  
qualified electors who have signed the petition.  
Elections Code Section 3520 (a) and (b).
  - c. Each Registrar of Voters where Proponents have filed any  
section of the petition shall transmit his Certificate  
to the Secretary of State. The Certificate is to show  
the number of valid signatures determined as of that  
date. The following are the dates on which the Certi-  
ficates must be sent to the Secretary of State.  
Elections Code Section 3520 (c).

60 Day . . . . .	.6/10/74
90 Day . . . . .	.7/9/74
120 Day . . . . .	.8/8/74
140 Day . . . . .	.8/28/74

3. Petition Sections (continued)

- d. Last day Proponent can circulate and file with the County . . . . .9/6/74  
Elections Code Sections 3507, 3520(a).
- e. Last day for County to transmit Certificate as to number of valid signatures on Initiative Petition . . . . .10/4/74  
Elections Code Section 3520(c).

4. Campaign Statements

- a. If the measure qualifies for the ballot:  
Last day for Proponent to file a Statement of Receipts and Expenditures for period ending 11/1/74 . . . . .11/8/74  
Elections Code Section 11552(a).
- b. If the measure does not qualify for the ballot:  
Last day for Proponent to file a Statement of Receipts and Expenditures for the period ending 10/4/74 . . .10/11/74  
Elections Code Section 11552(b).

(If the Secretary of State qualified the measure for the ballot on a date other than 10/4/74, the last day is not later than the 35th calendar day after the date the measure qualified.)

5. The Proponent of the above measure is:

Wesley R. Barrett  
5181 V.E. Avenue  
Oroville, CA 95965

Wesley R. Barrett, President  
California Peace Officers  
Association  
Suite 800, Forum Building  
Sacramento, CA 95814



EDWARD ARNOLD JR.  
Elections Assistant

EA:msl

NOTE: This initiative measure will not qualify in time for the November 1974 election, if the above dates are followed. In order to qualify for the November 1974 election, the above time frame must be shortened so that the Secretary of State certifies the measure for the ballot by June 27, 1974.

NOTE TO PROPONENT: Your attention is directed to Elections Code Sections 3500.1, 3502, and 3502.5 for appropriate format and type considerations in printing, typing or otherwise preparing your initiative petition for circulation and signing.

RECORD OF INITIATIVE, REFERENDUM, RECALL PETITIONS  
PROPOSED FOR DIRECT VOTE OF ELECTORS

Title: <u>PROBATION PROHIBITED FOR CERTAIN PERSONS</u>		Number Signatures Required <u>325,504</u>
Official Title and Summary Date <u>4-10-74</u>	Date (Not) Qualified For _____ Election _____	Number Signatures Certified <u>184,198</u>

County	60 DAY			90 DAY			120 DAY			140 DAY			180 DAY			TOTAL SIG.
	Number	Date	Filed	Number	Date	Filed	Number	Date	Filed	Number	Date	Filed	Number	Date	Filed	
Alameda				2,225	6/27	7/1										
Alpine																0
Amador													604	9/13	9/19	
Butte				872	6/26	6/27							3,151	8/27	9/22	
Calaveras							48	8/28	9/10	52	8/28	9/10				
Colusa													123	9/12	9/13	123
Contra Costa	899	6/21	6/25				583	8/7	8/8				1652	8/29	9/27	2245
Del Norte	60	6/10	6/12							107	8/28	9/10	162	9/6	9/12	
El Dorado	159	6/3	6/5	37	6/24	6/26	31	8/5	8/7	125	8/28	8/29	87	9/11	9/13	250
Fresno				189	6/17	6/18										
Glenn	76	6/13	6/14										283	9/16	9/17	359
Humboldt				209	6/17	6/18										
Imperial																0
Inyo	0	7/4	7/13	0	7/9	7/13	0	8/8	9/10	0	8/28	9/10	140	9/16	9/26	140
Kern	7,337	6/20	6/24										7477	9/10	9/12	
Kings	260	6/24	6/25							217	8/27	8/28	704			
Lake	15	5/31	6/10				211	8/5	8/7	33	8/28	9/10	7	9/13	9/16	266

County	60 DAY			90 DAY			120 DAY			140 DAY			160 DAY			TOTAL SIG.
	Number	Date	Filed	Number	Date	Filed	Number	Date	Filed	Number	Date	Filed	Number	Date	Filed	
Lassen	50	4/26	4/3							318	8/28	8/30				318
Los Angeles				32,560	7/9	7/1	2,005	8/8	8/14				2,005	8/8	8/14	2,005
Madera	173	6/24	6/27	9	6/27	7/2	160	8/7	8/9	134	8/27	8/30				134
Marin																0
Mariposa				22	7/9	7/10				23	8/19	8/21	11	9/6	9/10	23
Mendocino	212	6/21	6/24	2	7/9	7/17										212
Merced				47	6/25	6/24	75	8/8	8/9	49	8/28	8/30				121
Modoc										216	8/27	8/30	163	9/8	9/19	379
Mono													185	9/17	9/17	185
Monterey	397	6/25	6/28										2	9/1	9/1	399
Napa										169	9/11	9/12				169
Nevada	41	6/18	6/20										272	9/11	9/13	313
Orange	579	6/10	6/12	4071	7/9	7/11							6445	9/27	9/20	7024
Placer							218	8/8	8/9				42	9/3	10/4	260
Plumas	309	6/21	6/24													309
Riverside				2132	6/18	6/20	384	8/8	8/2				815	9/12	9/16	3331
Sacramento				3,642	6/6	6/6							15,547	9/26	9/26	19,189
San Benito																0
San Bern.				509	6/21	6/20							2978	9/16	9/19	3487
San Diego							25,535	8/8	8/2				480	1/1	1/1	26,015
San Francisco	419	6/24	6/25										1871	9/27	9/30	2290

