

9-25-1996

## Sentencing. Repeat And Multiple Offenders.

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**BILL JONES**  
 Secretary of State  
 State of California  
 #732

September 25, 1996

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENT (96288)

Pursuant to Section 336 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

**SENTENCING. REPEAT AND MULTIPLE OFFENDERS.  
 INITIATIVE STATUTE.**

Circulating and Filing Schedule

1. Minimum number of signatures required . . . . .433,269  
 Cal. Const., Art II, Sec. 8(b).
2. Official Summary Date . . . . . Wednesday, 09/25/96  
 Elec. C., Sec. 336.
3. Petitions Sections:
  - a. First day Proponent can circulate Sections for  
 signatures . . . . . Wednesday, 09/25/96  
 Elec. C., Sec. 336.
  - b. Last day Proponent can circulate and file with  
 the county. All sections are to be filed at  
 the same time within each county. . . . . Monday, 02/24/97\*  
 Elec. C., Secs. 336, 9030(a).
  - c. Last day for county to determine total number of  
 signatures affixed to petitions and to transmit total  
 to the Secretary of State . . . . . Thursday, 03/06/97  
 Elec. C., Sec. 9030(b).

(If the Proponent files the petition with the county on a date prior to 02/24/97, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 9030(b).

\* Date adjusted for official deadline which falls on Saturday. Elec. C., Sec. 15.

d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties . . . . . Saturday, 03/15/97\*\*  
Elec. C., Sec. 9030(c).

e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Friday, 04/25/97  
Elec. C., Sec. 9030(d), (e)

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 03/15/97, the last day is no later than the thirtieth day after the county's receipt of notification.)  
Elec. C., Sec. 9030(d), (e).

f. If the signature count is more than 476,596 or less than 411,606 then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 411,606 and 476,596 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures . . . . . Monday, 05/05/97\*\*  
Elec. C., Secs. 9030(f), (g); 9031(a).

g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Tuesday, 06/17/97  
Elec. C., Sec. 9031(b), (c).

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 05/05/97, the last day is no later than the thirtieth working day after the county's receipt of notification.)  
Elec. C., Sec. 9031(b), (c).

h. Secretary of State certified whether the petition has been signed by the number of qualified voters required to declare the petition sufficient . . . . . Saturday, 06/21/97\*\*  
Elec. C., Secs. 9031(d), 9033.

\*\* Date varies based on receipt of county certification.

4. The Proponent of the above-named measure is:

Mike Reynolds  
c/o Thomas W. Hiltachk  
Bell, McAndrews and Hiltachk  
455 Capitol Mall, Ste. 801  
Sacramento, CA 95814  
(916) 442-7757

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code sections 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen.37 (1980).
- (b) Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

Sincerely,

  
CATHY MITCHELL  
ELECTIONS SPECIALIST

Attachment: POLITICAL REFORM ACT OF 1974 REQUIREMENTS

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555

Facsimile: (916) 323-2137  
(916) 324-5490

September 25, 1996

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

SEP 25 1996

Bill Jones  
Secretary of State  
1500 - 11th Street  
Sacramento, CA 95814

BILL JONES, Secretary of State

By *C. B. Mitchell*  
Deputy Secretary of State

Re: Initiative Title and Summary  
Subject: SENTENCING. REPEAT AND MULTIPLE OFFENDERS.  
INITIATIVE STATUTE.  
File No: SA 96 RF 0012

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed to the proponent of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

Handwritten signature of Kathleen F. DaRosa in cursive.

KATHLEEN F. DaROSA  
Initiative Coordinator

KFD:ms  
Enclosures

Date: September 25, 1996  
File No: SA96RF0012

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

**SENTENCING. REPEAT AND MULTIPLE OFFENDERS. INITIATIVE STATUTE.**

Amends "Three Strikes" statutes to prohibit judges from striking prior convictions when prior was a violent felony, current offense is a serious or violent felony, or current offense was committed within ten years of conviction or release from custody for serious felony, whichever is later. Allows prosecutors discretion in filing prior convictions, but requires filing of reasons; plea bargaining, high caseload or disagreement with statute not authorized reasons. Amends statute to allow multiple punishment for multiple acts with same objective or committed in continuous transaction. Requires sentence for offense with longest prison term. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would likely result in an increase in the state's cost of operating prisons of at least \$35 million annually within five years and \$140 million annually within 25 years of enactment. The state also would likely incur major one-time capital outlay costs for construction of additional prison space of at least \$85 million within five years and probably will exceed \$335 million within 25 years of enactment. Major costs to the criminal justice system are likely, probably amounting to at least several million dollars annually. However, various provisions of this measure could result in offsetting savings to the state prison and criminal justice systems by deterring offenders from committing additional crimes and by further incapacitating criminals who would otherwise have committed additional crimes.

SA96RF0012  
Amdt. 1A

**BELL, MCANDREWS & HILTACHK**  
ATTORNEYS AND COUNSELORS AT LAW  
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CHARLES H. BELL, JR.  
COLLEEN C. MCANDREWS  
THOMAS W. HILTACHK

1441 FOURTH STREET  
SANTA MONICA, CA 90401  
(310) 458-1405

August 1, 1996

*Rec'd Ini.*  
*8-5-96*

VIA FACSIMILE AND U.S. MAIL

Kathy DaRosa,  
Initiative Coordinator  
Department of Justice  
1300 I Street  
Sacramento, CA 95814

Re: Save Three Strikes Initiative (Mike Reynolds, Proponent)

Dear Kathy:

As I indicated by telephone on August 1, 1996, there are a few typographical errors in the initiative that was filed with your office last week. I have included a fresh copy of the text for your use.

The typographical errors are as follows:

- 1) In SECTION 3 (page 2) of the initiative reference is made to the prior section on lines four and seven. The reference should be to SECTION 2 not SECTION 3.
- 2) On page 9, SECTION 9 is incorrectly numbered, it should be SECTION 8 (note, that there is currently two SECTION 9's).
- 3) On page 11, SECTION 13 on line two the word "in" is misspelled.

Thank you for your courtesy and cooperation.

Very truly yours,

*Thomas W. Hiltachk*  
Thomas W. Hiltachk

TWH/crb

RECEIVED  
AUG 8 1996

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

SAVE "THREE STRIKES" PUBLIC SAFETY ACT OF 1998

REVISED AUGUST 2, 1996

LANGUAGE THAT IS NEW TO EXISTING STATUTES IS UNDERLINED. LANGUAGE THAT IS DELETED FROM EXISTING STATUTES IS INDICATED BY LINES THROUGH THE LANGUAGE THAT IS ENCLOSED WITHIN BRACKETS [ ].

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

SECTION 1. (a) The People of the State of California find and declare that public safety is the most important duty of government. Providing for the public safety requires that habitual criminals must be adequately punished and incarcerated.

(b) To adequately punish and incarcerate habitual criminals the People of the State of California enact this measure that limits the discretionary power of judges to reduce sentences on habitual felons, that clarifies the proper use of judicial power to dismiss charges in criminal prosecutions of habitual felons, that increases sentences on and incarceration of felons who commit multiple criminal acts, that insures that habitual criminals are accountable for their violent and serious juvenile criminal acts, that regulates collateral attacks by habitual felons on their prior felony convictions, and that makes corrections to preclude incorrect interpretations that have hampered prosecution of habitual criminals under California's strongest habitual felon statute, "Three Strikes and You're Out."

(c) With these goals in mind, we the people do hereby enact the Save "Three Strikes" Public Safety Act.

SECTION 2. Penal Code section 654 is amended to read:

654. (a) An act or omission which is made punishable in different ways by different provisions of



this code [may] shall be punished under [~~either of such provisions~~] the provision that carries the longest potential term of imprisonment [~~but in no case can it be punished under more than one~~].  
An [an] acquittal or conviction and sentence under any [~~either~~] one bars a prosecution for the same act or omission under any other.

(b) The phrase act or omission refers only to an individual act or omission. This section shall not prohibit multiple punishment for multiple acts or omissions, whether those acts or omissions are committed in a continuous transaction, or whether they are committed with the same intent or objective.

(c) Whenever the provisions of subdivision (a) apply and the person is convicted of one or more offenses for which probation shall not be granted or the execution or imposition of sentence shall not be suspended, that person shall be sentenced and committed to state prison in accordance with subdivision (a).

SECTION 3. It is the intent of the People of the State of California in enacting Section 2 of this act to abrogate the holding of *People v. Norrell*, 13 Cal.4th 1 (1996), that allows a trial court to impose a sentence for a lesser offense on a defendant who commits multiple offenses incident to one objective. It is further the intent of the People of the State of California in enacting Section 2 of this act to abrogate the holdings of *Neal v. State of California*, 55 Cal.2d 11 (1960) and *People v. Latimer*, 5 Cal.4th 1203 (1993), to the extent those opinions prohibit multiple punishment for multiple acts merely because the acts were incident to one objective. Section 2 of this act is intended to authorize multiple punishment for multiple criminal convictions that are incident to one objective, and is also intended to mandate that trial courts must sentence a defendant for the offense with the greatest potential term of imprisonment.

SECTION 4. Penal Code section 667, subdivisions (b) to (i), inclusive, are repealed.

SECTION 5. The repeal of subdivisions (b) to (i), inclusive, of Section 667 of the Penal Code

applies only to public offenses committed on or after the effective date of the repeal. It is the intent of the People of the State of California that the repeal of subdivisions (b) to (i), inclusive, of Section 667 be given no retroactive effect and that persons who have been charged or who may be charged pursuant to the provisions of subdivisions (b) to (i), inclusive, of Section 667 in effect prior to the effective date of the repeal, shall be held responsible therefor.

SECTION. 6. 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.

(b) [(2)] Except as provided in subdivision (c) of section 1170.12, [This subdivision] this section 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 section [subdivision] to apply.

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

(d) [(4)] As used in this section [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.]~~

SECTION 7. Section 1170.12 of the Penal Code is amended to read:

1170.12. (a) ~~(1)~~ Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

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

(B) ~~[(2)]~~ Probation ~~[for the current offense]~~ shall not be granted to, nor shall the execution or imposition of the sentence be suspended for the defendant on any of the current offenses ~~[prior offense]~~.

(C) ~~[(3)]~~ Except as provided in subdivision (c) of section 1385, the ~~[The]~~ length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.

(D) ~~[(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.

(E) ~~[(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, Section 4019, or any other provision of law providing for reduction of the term of imprisonment based on conduct credits, 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.

(F) ~~[(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.

(G) ~~[(7)]~~ If there is a current conviction for more than one serious or violent felony ~~[as described in paragraph (6) of this subdivision]~~, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may

be consecutively sentenced in the manner prescribed by law.

(H) [(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, unless a concurrent sentence would result in a longer total term of imprisonment.

(2) Notwithstanding any other provision of law, if the defendant is charged with a felony and it is alleged that the defendant has suffered a prior felony conviction as defined in subdivision (b), and the guilt of the defendant on the felony charge has not been adjudicated, no magistrate or judge shall grant diversion to the defendant.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior felony 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 felony conviction for purposes of this section shall be made [~~upon~~] with reference to the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of this section:

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

(B) The stay of execution of sentence.

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

(D) The commitment to the California Rehabilitation Center or any other facility the effect of which [~~whose function~~] is [~~rehabilitative~~] diversion from the state prison.

(E) The commitment to the California Youth Authority following a conviction of a felony.

(2) A conviction in another jurisdiction for an offense that, if committed in

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

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of determining a sentence under this section ~~[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)]~~ described ~~[listed]~~ in this subdivision as a felony, and

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

~~(C)~~ ~~[(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 juvenile ~~[person]~~ committed an offense ~~[listed in subdivision (b) of Section 707 of the Welfare and Institutions Code]~~ described in this subdivision as a felony.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions ~~[which may apply]~~ provided by law, including any enhancements for prior convictions and prior prison terms, and specifically including the enhancement listed in subdivision (a) of Section 667, the following shall apply where a defendant has a prior felony conviction:

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

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

minimum term of the indeterminate sentence calculated as the greater of:

(i) ~~[three]~~ Three times the determinate base term or three times the minimum term for an indeterminate term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions, or

(ii) ~~[twenty-five]~~ 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) Notwithstanding subparagraph (F) of paragraph (1) of subdivision (a), ~~the~~ [The] indeterminate term described in subparagraph (A) ~~[of paragraph (2) of this subdivision]~~ shall be served consecutively to any other term of imprisonment for which a consecutive term may be imposed by law, including but not limited to, indeterminate terms for other current felony convictions in the same action. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) ~~[of paragraph (2) of this subdivision]~~ shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant is charged by complaint, information or indictment with a felony as defined in subdivision (a) of Section 17, and also has a prior felony conviction as defined in this section, unless the punishment imposed under other provisions of law would result in a longer term of imprisonment or a penalty of death. ~~[The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).]~~

(2) The prosecuting attorney shall plead in the information or indictment and shall prove in the superior court each known prior felony conviction, as defined in this section, except as follows:

(A) ~~[(2)]~~ The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation ~~[in the furtherance of justice pursuant to Section 1385, or]~~ if there is insufficient evidence to prove the prior conviction. If ~~[upon the satisfaction of]~~ the court is

satisfied that there is insufficient evidence to prove the prior felony conviction, the court shall [may] dismiss or strike the allegation.

(B) The prosecuting attorney may, in the furtherance of justice and in the exercise of discretion, decide not to charge one or more prior felony convictions. If the prosecuting attorney does not file one or more prior felony convictions, the prosecuting attorney shall file with the superior court, within 10 days of filing the charging document in the superior court, but in no event later than the date set for sentencing, a notice listing all known prior felony convictions of the defendant and a brief statement of the reasons why the convictions were not charged. The notice shall be for the benefit of the public and is not intended to alter any substantive law regarding the charging of offenses. The prosecuting attorney shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in this section or in subdivision (c) of Section 1385.

(C) The judge on his or her own motion, or upon the application of the prosecuting attorney, may strike or dismiss a prior felony conviction in the furtherance of justice pursuant to subdivision (a) of Section 1385, if the dismissal or striking of the prior felony conviction is not prohibited by subdivision (c) of Section 1385.

(3) This subdivision does not authorize a prosecuting attorney to decline to plead and prove a prior conviction because the prosecuting attorney disagrees with the provisions of this section, for plea bargaining, as defined in subdivision (b) of section 1192.7, or to address a perceived need for a reduction of caseloads.

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

(f) All references to existing statutes which define serious felonies in subdivision (c) of Section 1192.7, or violent felonies in subdivision (c) of Section 667.5, are to those statutes as they existed on June 30, 1996.

SECTION 8. Section 1385 of the Penal Code is amended to read:

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

(b) This section does not authorize a judge or magistrate to strike or dismiss any prior conviction of a serious felony alleged for purposes of enhancement of a sentence under Section 667.

(c) (1) This section does not authorize a judge or magistrate to strike or dismiss, upon his or her own motion or upon application of the prosecuting attorney, any prior felony conviction alleged for purposes of determining a sentence under Section 1170.12, unless all of the following are true:

(A) None of the defendant's prior felony convictions was for a violent felony, as defined in subdivision (c) of Section 667.5, or for a felony committed in another jurisdiction that includes all of the elements of any violent felony as defined in subdivision (c) of Section 667.5.

(B) The complaint, indictment or information alleging the current felony offense does not charge the defendant with the commission, nor has the defendant been convicted in the current action, of a serious felony as defined in subdivision (c) of Section 1192.7 or a violent felony as defined in subdivision (c) of Section 667.5.

(C) The defendant committed the current offense more than ten years after he or she was last convicted of a serious felony, or last released from custody as a result of conviction of a serious felony, whichever is later. A serious felony is a felony as defined in subdivision (c) of Section 1192.7, or a felony committed in another jurisdiction that includes all of the elements of any serious felony as defined in subdivision (c) of Section 1192.7.

(2) This subdivision applies to all current offenses committed on or after the



operative date of this subdivision which are subject to punishment under Section 1170.12.

(d) This section does not authorize a judge or magistrate to strike or dismiss language from a charge when the effect of the striking or dismissal is to reduce the charged offense to a lesser, but not necessarily included, charge.

SECTION 9. It is the intent of the People of the State of California in enacting subdivision (d) of Penal Code Section 1385 in Section 8 of this act to abrogate the holding of *People v. Bermudez*, No. G014957 (June 28, 1996), because *Bermudez* is an incorrect statement of existing law. Subdivision (d) of Penal Code Section 1385 in Section 8 of this act is intended to be declaratory of existing law and to clarify and reemphasize the proper application of Section 1385.

SECTION 10. Section 1385.2 of the Penal Code is added to read:

1385.2. (a) No defendant may make, and no court shall have authority to hear or grant, a motion to strike or dismiss a prior felony conviction allegation or a proven prior felony conviction on the grounds that the prior felony conviction is invalid under the Constitution of the United States or the Constitution of the State of California, unless:

(1) The defendant is charged with murder with special circumstances pursuant to Penal Code section 190.2 and the prosecution is seeking a sentence of death; or

(2) The defendant pleads and proves by a preponderance of the evidence that he or she was actually deprived of the right to counsel in the proceedings on the prior felony conviction. Actually deprived of the right to counsel is defined to mean that the defendant was not represented by an attorney licensed to practice law, or that such counsel was not present, at the time the defendant's guilt was adjudicated by plea or verdict or at the time the defendant was sentenced. An allegation that the defendant was deprived of effective assistance of counsel, or that the representation of the defendant by counsel was constitutionally inadequate, or words to that effect, shall not be construed to satisfy the requirements of this paragraph.

(b) If the defendant establishes that he or she was actually deprived of the right to counsel

in the proceedings on the prior felony conviction, the defendant and the People may present, and the court may consider, any relevant evidence bearing on the question whether the prior felony conviction is invalid under the Constitution of the United States or the Constitution of the State of California.

(c) This section shall not be construed to impair or restrict the right of a defendant to file in the rendering court a habeas corpus petition to set aside or vacate a judgment of conviction.

SECTION 11. It is the intent of the People of the State of California in enacting Section 10 of this act to limit the application of *People v. Sumstine*, 36 Cal.3d 909 (1984), and to abrogate the holdings of *Garcia v. Superior Court*, 40 Cal.App.4th 552 (G017206, November 22, 1995) (rev. granted), and *People v. Allen*, 44 Cal.App.4th 1707 (B090990, May 1, 1996).

SECTION 12. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 13. The provisions of this measure 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.

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