2004

Limitations on "Three Strikes" Law. Sex Crimes. Punishment.

PROP
65

Pursuant to statute,
Proposition 65 will appear in a
Supplemental Voter Information Guide.

PROP
66

Limitations on "Three Strikes" Law. Sex Crimes. Punishment. Initiative Statute.

Summary

Limits "Three Strikes" law to violent and/or serious felonies. Permits limited re-sentencing under new definitions. Increases punishment for specified sex crimes against children. Fiscal Impact: Over the long run, net state savings of up to several hundred million dollars annually, primarily to the prison system; local jail and court-related costs of potentially more than ten million dollars annually.

What Your Vote Means

Yes

A **YES** vote on this measure means: The current "Three Strikes" sentencing law would be amended to require that a second and third strike offense be a serious or violent felony, instead of any felony, in order for the longer sentences required under Three Strikes to apply. The state would be required to resentence "third strikers" whose third strike was nonviolent and nonserious. In addition, prison sentences for specified sex offenses against children would be lengthened.

No

A **NO** vote on this measure means: Current sentencing law would remain in effect, requiring offenders with one or more prior convictions for serious or violent felonies to receive longer sentences for the conviction of any new felony (not just a serious or violent felony). In addition, prison sentences for certain sex offenses against children would remain unchanged.

Arguments

Pro

PROPOSITION 66 RESTORES THREE STRIKES TO ITS ORIGINAL INTENT—ensuring criminals currently serving time for violent offenses are kept in prison, SAVING TAXPAYERS BILLIONS OF DOLLARS currently wasted imprisoning shoplifters and other nonviolent, petty offenders for life. PROPOSITION 66 PROTECTS CHILDREN WITH TOUGHER 1-STRIKE SENTENCES FOR CHILD MOLESTERS. *YES ON PROPOSITION 66.*

Con

Proposition 66 is opposed by Governor Schwarzenegger, the Attorney General, all 58 District Attorneys, the state's leading law enforcement, taxpayer, and child protection groups. Costs millions and threatens public safety by creating a legal loophole that could release an estimated 26,000 convicted felons—including rapists, child molesters, and murderers. www.Keep3Strikes.org

For Additional Information

For

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Against

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PROPOSITION

66

Limitations on "Three Strikes" Law. Sex Crimes. Punishment. Initiative Statute.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Limitations on "Three Strikes" Law. Sex Crimes. Punishment. Initiative Statute.

- Amends "Three Strikes" law to require increased sentences only when current conviction is for specified violent and/or serious felony.
- Redefines violent and serious felonies. Only prior convictions for specified violent and/or serious felonies, brought and tried separately, would qualify for second and third "strike" sentence increases.
- Allows conditional re-sentencing of persons with sentences increased under "Three Strikes" law if previous sentencing offenses, resulting in the currently charged felony/felonies, would no longer qualify as violent and/or serious felonies.
- Increases punishment for specified sex crimes against children.

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

- Net state savings of potentially several tens of millions of dollars initially, increasing to several hundred million dollars annually, primarily to the prison system.
- Increased county costs of potentially more than ten million dollars annually for jail and court-related costs.

ANALYSIS BY THE LEGISLATIVE ANALYST

Background

There are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. About 18 percent of persons convicted of a felony are sent to state prison. The rest are supervised on probation in the community, sentenced to county jail, or both.

Existing law classifies some felonies as "violent" or "serious," or both. Of the inmates sentenced to prison in 2003, approximately 30 percent were convicted for crimes defined as serious or violent. Examples of felonies currently defined as violent include murder, robbery, and rape and other sex offenses. Felonies defined as serious include the same offenses defined as violent felonies, but also include other offenses such as burglary of a residence and assault with intent to commit robbery. There are other felonies that are not classified as violent or serious, such as grand theft and possession of a controlled substance.

As of April 2004, there were about 163,000 inmates in California prisons, as well as some state-contracted facilities. The costs to operate the state prison system in 2004–05 are estimated to be approximately $5.7 billion.

Three Strikes. Proposition 184 (commonly referred to as the "Three Strikes and You're Out" law) was adopted by the voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, it requires that a person who is convicted of a felony and who has been previously 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 often referred to as "second strikers." As of March 2004, about 35,000 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 life imprisonment with the minimum term being 25 years. Offenders convicted under this provision are frequently referred to as "third strikers." As of March 2004, about 7,000 inmates were third strikers.

Sex Offenses. California law sets penalties for a variety of sex offenses, including sex offenses committed against children. Current law requires a prison sentence of 3, 6, or 8 years (depending on the circumstances of the crime) for anyone convicted of sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender.

Proposal

This measure amends the Three Strikes law and also amends the law relating to sex crimes against children. These changes are described below.

Three Strikes Law

New Crime Must Be Violent or Serious. This measure requires that an offender would be subject to a longer sentence under the Three Strikes law only if the conviction for the new crime is for a violent or serious felony, instead of any felony as provided under current law.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

Narrows Felonies Considered Violent or Serious. This measure reduces the number of felony offenses considered serious or violent. Figure 1 lists for illustration purposes selected felonies that would no longer be considered serious or violent. These changes are not limited to convictions under the Three Strikes law and, therefore, would also affect some other aspects of sentencing, such as the amount of credits inmates can earn towards a reduced sentence.

FIGURE 1

Selected Felonies No Longer Considered Violent or Serious Offenses Under Proposition 66

- Attempted burglary
- Conspiracy (multiple people planning) to commit assault
- Nonresidential arson resulting in no significant injuries
- Threats to commit criminal acts that would result in significant personal injury
- Burglary of an unoccupied residence
- Interfering with a trial witness without the use of force or threats and not in the furtherance of a conspiracy
- Participation in felonies committed by a criminal street gang
- Unintentional infliction of significant personal injury while committing a felony offense

Requires Strikes to Be Tried Separately. Under current law, a defendant can receive multiple strikes in a single trial. For example, a defendant in a burglary case can be convicted of two separate burglary offenses in the same trial and get two strikes. This measure requires that eligible offenses be brought and tried in separate trials in order for each of them to be counted as a strike. This provision could result in counties holding separate trials in cases where local law enforcement officials want to obtain longer sentences under the Three Strikes law.

Resentencing of Offenders. This measure requires the state to resentence offenders currently serving an indeterminate life sentence under the Three Strikes law if their third strike resulted from a conviction for a nonviolent and nonserious felony offense, as defined by this proposition. Resentencing must occur no later than 180 days after this measure takes effect. The resentencing requirement will result in reduced prison sentences for some inmates and release from prison for others.

Sex Offenders of Children Under 14 Years of Age

This measure increases a prison sentence to 6, 8, or 12 years for the first conviction for sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender. However, if the victim is under the age of 10, the district attorney has the discretion to seek imprisonment of 25 years to life. This measure requires that a second conviction for these offenses shall result in a sentence of 25 years to life. It also requires the state to provide counseling services for these offenders while they are in prison and for at least one year following release from prison.

Fiscal Effects

Three Strikes Law

State Prison Savings. The prison population would be lower because of the proposition's provisions that (1) limit new Three Strikes qualifying convictions to serious or violent felonies, (2) require resentencing of some third strikers, and (3) reduce the number of crimes that are considered serious or violent. The combined effect of these changes would be prison operations savings of potentially several tens of millions of dollars in the first couple of years, growing to as much as several hundred millions of dollars in ongoing savings when the full impact of the measure is realized in about a decade. The lower prison population resulting from this measure would potentially result in capital outlay savings in the long term associated with prison construction and renovations that would otherwise have been needed.

State Parole Supervision Costs. This measure would accelerate the release of some state prisoners to parole due to the shorter prison sentences served by those inmates. The cost associated with this increase in the parole caseload is unknown, but could be about ten million dollars annually when the full impact of the measure is realized.

Costs for Court-Related Activities and County Jails. This measure would result in additional state and local costs for the courts and county jails. Three factors primarily account for the increased costs. First, the resentencing provision would increase court caseloads, and local jails would likely house inmates during the proceedings. Second, it is likely that some offenders released from prison because of this measure will be subsequently prosecuted and convicted for new crimes. Third, some offenders who would be sentenced to state prison under current law will be sentenced to jail, instead of prison, under this measure for crimes newly defined as nonserious and nonviolent. We estimate these additional costs could be as much as a few tens of millions of dollars annually when the full impact of the measure is realized. These costs would be split between state and local governments.

Other Impacts on State and Local Governments. There could be other costs to the extent that offenders released from prison because of this measure require other government services, or commit additional crimes that result in victim-related government costs, such as government-paid health care for persons without insurance. Alternatively, there could be offsetting revenue to the extent that offenders released from prison become taxpaying citizens. The extent and magnitude of these impacts is unknown.

Sex Offenders of Children

The annual cost of incarcerating and providing counseling services to the sex offenders affected by this measure would likely grow from a couple hundred thousand dollars to as much as a couple of million dollars on an ongoing basis.

For text of Proposition 66 see page 110.

PROP 66

LIMITATIONS ON "THREE STRIKES" LAW. SEX CRIMES. PUNISHMENT. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 66

Ten years ago, voters were asked to pass tougher sentences for repeat violent criminals. We approved the Three Strikes law because that's what we were told it would do.

We weren't told that Three Strikes would also lock up nonviolent, petty offenders for life.

VOTING YES ON PROPOSITION 66 WILL RESTORE THREE STRIKES TO ITS PROMISE AND THE ORIGINAL INTENT OF VOTERS.

Voting *YES ON PROPOSITION 66* will:

- Not result in the release of criminals currently serving time for murder, rape, kidnapping, child molestation, and other truly violent and serious crimes.
- Apply commonsense sentences to nonviolent, petty offenders.
- Save taxpayers hundreds of millions of dollars every year that are wasted on keeping videotape, bread or T-shirt thieves and bad check writers in prison for life.
- Protect our children by stopping child molesters with a "1 Strike" sentence.

Proponents of the 1994 law claimed that, "Three Strikes keeps career criminals, who rape women, molest innocent children and commit murder, behind bars where they belong."

But, according to the California Department of Corrections, almost 65% of those serving second and third strike sentences were convicted of nonviolent, petty offenses such as writing a bad check, stealing a videotape, loaf of bread or pack of T-shirts.

CALIFORNIANS INTENDED THAT THE THREE STRIKES LAW TARGET MURDERERS, RAPISTS, AND KIDNAPPERS, NOT VIDEOTAPE AND T-SHIRT THIEVES. PROPOSITION 66 WILL RESTORE THREE STRIKES TO WHAT VOTERS INTENDED.

After ten years, Three Strikes has stuck California taxpayers with a $6 billion bill to punish videotape and T-shirt thieves, and other nonviolent petty offenders.

Voting yes on Proposition 66 will save taxpayers billions of dollars over the next decade by doing what makes sense—ensuring that only truly dangerous or violent repeat criminals, such as murderers and kidnappers, spend the rest of their lives in prison.

Don't be fooled by what opponents say. No one serving time for rape, murder, kidnapping, or child molestation will be released by passage of Proposition 66.

PROPOSITION 66 IS NOT ABOUT GETTING SOFT ON CRIME, IT'S ABOUT GETTING SMART ON CRIME.

Read what others are saying:

- *Orange County Register*: "The measure . . . will end the unreasonable practice under current law of sending those convicted of petty offenses to life in prison at great cost to taxpayers."
- *The Sacramento Bee*: "California needs to modify its three-strikes law, the harshest in the nation."
- *San Jose Mercury News*: "The law is wasting tens of millions of tax dollars . . . and wasting lives."
- *Fresno Bee*: "Californians have a legitimate interest in protecting themselves by putting away for life . . . violent habitual criminals. But the "Three Strikes" law should not be netting nonviolent, three-time shoplifters for 25-years-to-life sentences."
- *San Francisco Chronicle*: ". . . studies by criminal-justice experts show the law to be unduly costly . . . and failing in its primary mission to curb crime."

VOTING YES ON PROPOSITION 66 WILL RESTORE THREE STRIKES TO THE ORIGINAL INTENT OF THE VOTERS, SAVE TAXPAYERS BILLIONS OF DOLLARS, AND PROVIDE EVEN STRONGER PROTECTION FOR OUR CHILDREN FROM PREDATORY CHILD MOLESTERS.

VOTE YES ON PROPOSITION 66.
www.yesonproposition66.com

RED HODGES, *President*
Violence Research Foundation
REV. RICK SCHLOSSER, *Executive Director*
California Church Impact
RONALD HAMPTON, *Executive Director*
National Black Police Association

REBUTTAL to Argument in Favor of Proposition 66

A wealthy businessman whose adult son is in prison for killing two people and seriously injuring another spent $1.57 million to put Proposition 66 on the ballot. If it passes, his son will be released early. So could some 26,000 other convicted criminals, according to the California District Attorneys Association—which is why the Governor, the Attorney General and every District Attorney in California oppose it.

Proponents of Proposition 66 want you to believe California prisons are filled with petty criminals serving life sentences for writing bad checks and stealing T-shirts. In fact, the average California inmate is convicted of five felonies before ever being sent to state prison. These are hardcore criminals who've worked hard to be in prison.

Judges and district attorneys already have the discretion not to prosecute petty crimes as "strike" offenses. In those rare cases where petty criminals have received disproportionate sentences, the courts have shortened them.

Proposition 66 won't keep murderers, rapists, child molesters, and other violent criminals in prison. It releases thousands of inmates with long records of serious and violent crime—including murder, rape, and child molesting.

Nor will Proposition 66 protect children. It puts some of California's most notorious child molesters back on the street.

Proposition 66 won't save tax money. It will cost taxpayers millions to return thousands of inmates to county jails for re-sentencing and release, and billions more to deal with the cost of higher crime and violence.

Even if you believe "3 Strikes" should be modified, Proposition 66 isn't the answer.

CAM SANCHEZ, *President*
California Police Chiefs Association
JON COUPAL, *President*
Howard Jarvis Taxpayers Association
SHEILA ANDERSON, *President*
Prevent Child Abuse California

LIMITATIONS ON "THREE STRIKES" LAW. SEX CRIMES. PUNISHMENT. INITIATIVE STATUTE.

PROP 66

ARGUMENT Against Proposition 66

Don't be fooled. Proposition 66 won't protect children or save tax money. It creates a new legal loophole for convicted criminals that will cost taxpayers millions of dollars and flood our streets with thousands of dangerous felons, including rapists, child molesters, and murderers. That's why Proposition 66 is strongly opposed by every major public safety, taxpayer, and child protection group in California, including:

- California Police Chiefs Association
- California District Attorneys Association
- Prevent Child Abuse California
- National Tax Limitation Committee
- California Sexual Assault Investigators Association
- California State Sheriffs' Association
- Mothers Against Gang Violence
- Marc Klaas, Klaas Kids Foundation

The California District Attorneys Association estimates Proposition 66 will release as many as 26,000 convicted felons from California prisons and return them to the counties for re-sentencing, where cash-strapped jails are already overflowing. These are not petty criminals and low-level drug offenders who steal pizzas and videotapes. These are dangerous hardcore criminals with long histories of serious and violent crimes. Most will have their sentences dramatically reduced if Proposition 66 is approved, including:

- Edward Rollins, a career criminal with a thirty-year history of serious and violent crime that includes burglary, assault with a deadly weapon, battery of a police officer, robbery, battery with serious bodily injury, receiving stolen property, possession of a sawed-off shotgun, sexual assault and multiple parole violations. Under Proposition 66 he could be eligible to apply for release.
- Kenneth Parnell, the notorious child molester who kidnapped and sexually assaulted young Steven Staynor for seven years, and who recently was convicted of trying to buy a 4-year-old boy for $500. Instead of serving 25 years to life for his crimes against children, Proposition 66 will set him free within weeks.
- Steven Matthews, a member of the Aryan Brotherhood with a violent criminal history that includes robbery, kidnapping, murder, and the rape of his mother. Instead of serving 25 years to life, Proposition 66 will put him back on the street in early 2005.

If Proposition 66 passes, arson, residential burglary, attempted burglary, criminal threats, felony gang crimes, and felonies like drunk driving in which innocent people are seriously hurt or killed will no longer be considered "strikes." Likewise, juvenile sex offenders will no longer receive a strike for seriously injuring an elderly or disabled person during an assault with intent to commit rape.

California's crime rate has decreased by twice the national average since voters approved "Three Strikes" in 1994, according to FBI statistics. We've had two million fewer victims, taxpayers have saved an estimated $28.5 billion and dangerous career criminals have been taken off the street. Instead of "fine-tuning" this important public safety law, Proposition 66 destroys it.

According to Wayne Quint, Jr., President of the California Coalition of Law Enforcement Associations: "Crime will go up and innocent people will be hurt or killed if Proposition 66 passes. This is a very dangerous initiative."

We agree.

Don't give violent criminals another loophole to get out of prison. Vote NO on Proposition 66.

ARNOLD SCHWARZENEGGER, *Governor of California*
BILL LOCKYER, *Attorney General of California*
HARRIET SALARNO, *Chair*
Crime Victims United of California

REBUTTAL to Argument Against Proposition 66

DON'T BE FOOLED BY OPPONENTS' DECEPTIVE SCARE TACTICS.

- PROPOSITION 66 WON'T RELEASE A SINGLE "Striker," let alone thousands, serving time for rape, murder, or child molestation.
- PROPOSITION 66 DOES NOT STOP ANYONE CONVICTED OF A CRIME FROM BEING FULLY PUNISHED FOR THEIR CRIME—whether juvenile or adult, arsonist, murderer, or drunk driver, including examples cited by opponents.
- PROPOSITION 66 DOESN'T "DESTROY" THREE STRIKES. It does exactly what voters originally intended—punish repeat violent criminals with life sentences.

Our opponents hope you'll be fooled. Here's the truth about Proposition 66:

- PROPOSITION 66 *RESTORES VOTERS' INTENT* of keeping violent criminals off our streets.
- PROPOSITION 66 *PROTECTS CHILDREN* by providing a tougher 1-Strike sentence for child molesters.
- PROPOSITION 66 *STOPS BILLIONS OF TAX DOLLARS FROM BEING WASTED* imprisoning shoplifters and other nonviolent petty offenders for life.
- Proposition 66 will allow three to four thousand nonviolent petty offenders to apply for retrial, but *will not* release a single violent striker.
- Criminals opponents cite have served sentences for violent crimes BUT are now incarcerated for nonviolent offenses.

California is the only state with a Three Strikes law that can send someone to prison for life for stealing a loaf of bread. *Proposition 66 will make sure the time fits the crime.*

Major newspapers across California haven't been fooled by deceptive scare tactics and have repeatedly called for Three Strikes to match voters' intent.

RESTORE THREE STRIKES TO ITS PROMISE, TOUGHEN LAWS AGAINST CHILD MOLESTERS, SAVE TAXPAYERS BILLIONS.

VOTE YES ON PROPOSITION 66—Three Strikes as voters meant it to be in the first place.

MARK LENO, *Chairman*
California State Assembly Committee on Public Safety
RAMONA RIPSTON, *Executive Director*
A.C.L.U. of Southern California
JOE KLAAS, *Chairman*
Citizens Against Violent Crime

Proposition 64 *(cont.)*

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public~~ *who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state*.

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. *Penalty for Violations of Chapter; Proceedings; Disposition of Proceeds*

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer.

If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city. *The aforementioned funds shall be for the exclusive use by the Attorney General, district attorney, county counsel, and city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

SEC. 7. In the event that between July 1, 2003, and the effective date of this measure, legislation is enacted that is inconsistent with this measure, said legislation is void and repealed irrespective of the code in which it appears.

SEC. 8. In the event that this measure and another measure or measures relating to unfair competition law shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure relating to unfair competition law shall be null and void.

SEC. 9. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

Proposition 65

Pursuant to statute, Proposition 65 will appear in a Supplemental Voter Information Guide.

Proposition 66

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 sections of the Penal Code and amends a section of the Welfare and Institutions 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

THE THREE STRIKES AND CHILD PROTECTION ACT OF 2004

SECTION 1. Title

This initiative shall be known and may be cited as the Three Strikes and Child Protection Act of 2004.

SEC. 2. Findings and Declarations

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

(a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies;

(b) Proposition 184 did not set reasonable limits to determine what criminal acts to prosecute as a second and/or third strike; and

(c) Since its enactment, Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars ($800,000,000) per year.

SEC. 3. Purposes

The people do hereby enact this measure to:

(a) Continue to protect the people from criminals who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;

(c) Require that no more than one strike be prosecuted for each criminal act and to conform the burglary and arson statutes; and

(d) Protect children from dangerous sex offenders and reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify for increased punishment according to this act.

Proposition 66 *(cont.)*

SEC. 4. Sex Offenders of Children

Section 289 of the Penal Code is amended to read:

289. (a) (1) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) *(1)* Any person who participates in an act of sexual penetration *or oral copulation* with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for ~~three,~~ six, ~~or~~ eight ~~years,~~ *or twelve years and receive counseling during the imprisonment and for a period of at least one year following release. This counseling shall be structured in a way so that it does not endanger the prisoner's life or safety* .

(2) A second conviction of this offense, pled and proved separately, will result in imprisonment in the state prison for 25 years to life. If the victim is under the age of 10 on the first offense the prosecution may seek a sentence of 25 years to life, but the court retains discretion to sentence under paragraph (1).

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 5. Amendments to Section 667 of the Penal Code

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~~ *any* serious felony listed in subdivision (c) of Section 1192.7 ~~.~~ *as amended by the Three Strikes and Child Protection Act of 2004.*

(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~~ *people of the State of California* in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a *serious and/or violent* felony and have been previously convicted of serious and/or violent felony offenses.

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(c) Notwithstanding any other *provision of* law, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions *that were brought and tried separately* 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 *serious and/or violent* 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 *serious and/or violent* felony conviction shall not affect the imposition of *the* sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and 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 *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious ~~or~~ *and/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 *any of the following* :

(1) Any offense defined in subdivision (c) of Section 667.5 *as amended by the Three Strikes and Child Protection Act of 2004* as a violent felony or any offense defined in subdivision (c) of Section 1192.7 *as amended by the Three Strikes and Child Protection Act of 2004* as a serious felony in this state *and the conviction(s) were brought and tried separately* . The determination of whether a prior conviction is a prior *serious and/or violent* 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 *serious and/or violent* 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 conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 *as amended by the Three Strikes and Child Protection Act of 2004 and the conviction(s) were brought and tried separately* .

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true* :

(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 *described in subdivision (c) of Section 667.5 or described in subdivision (c) of Section 1192.7 as amended by the Three Strikes and Child Protection Act of 2004 or is one of the following offenses* listed in subdivision (b) of Section 707 of the Welfare and Institutions Code ~~or described in paragraph (1) or (2) as a felony~~ *as amended by the Three Strikes and Child Protection Act of 2004* .

(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 *as amended by the Three Strikes and Child Protection Act of 2004* .

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

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

(2) (A) If a defendant has *been convicted of a serious and/or violent felony, as defined in Section 667.5 or 1192.7, or Section 707 of the Welfare and Institutions Code, as amended by the Three Strikes and Child Protection Act of 2004, and* has two or more prior *serious and/or violent* felony convictions as defined in subdivision (d) that have been pled and proved *and that were brought and tried separately* , the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of *the following* :

(i) Three times the term otherwise provided as punishment for each current *serious and/or violent* 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.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a 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 felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

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

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as ~~they existed on June 30, 1993~~ *amended by the Three Strikes and Child Protection Act of 2004* .

(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. 6. Amendments to Section 667.1 of the Penal Code

Section 667.1 of the Penal Code is amended to read:

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

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offenses committed on or after the effective date of ~~this act~~ *the Three Strikes and Child Protection Act of 2004* , 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 this act~~ *are amended by that act* .

SEC. 7. Amendments to Section 667.5 of the Penal Code

Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable *on the first conviction* by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant ~~inflicts~~ *specifically intends to personally inflict* great bodily injury on any person other than an accomplice *and in which the defendant acts to personally inflict great bodily injury on any person other than an accomplice and* which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July l, 1977, in Sections 213, 264, and 461, or any felony in which the defendant *personally* uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) A violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1 *(c)* , which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 8. Amendments to Section 1170.12 of the Penal Code

Section 1170.12 of the Penal Code is amended to read:

1170.12. (a) *It is the intent of the people of the State of California, in amending this section pursuant to the Three Strikes and Child Protection Act of 2004, to ensure longer prison sentences and greater punishment for those who commit a serious and/or violent felony and have been previously convicted of serious and/or violent felony offenses.*

(b) Notwithstanding any other provision of law, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled , ~~and~~ proved *and that were brought and tried separately* that the defendant has *been convicted of* 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

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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 *serious and/or violent* 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 *serious and/or violent* 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 ~~.~~ *, and*

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

~~(b)~~ *(c)* Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a *serious and/or violent* felony shall be defined as ~~:~~ *any offense defined in subdivision (c) of Section 667.5 or in subdivision (c) of Section 1192.7, as amended by the Three Strikes and Child Protection Act of 2004.*

~~(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 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)~~ *(3)* A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular *serious and/or violent* felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular *serious and/or violent* felony as defined ~~in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7~~ *by the Three Strikes and Child Protection Act of 2004 and that was brought and tried separately* .

~~(3)~~ *(4)* A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true* :

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense ~~, and~~ .

(B) The prior offense is

~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~

~~(ii) listed in this subdivision as a felony, and~~ *described in paragraph (1) or (2) as a serious and/or violent felony as amended by the Three Strikes and Child Protection Act of 2004, or is one of the following offenses listed in subdivision (b) of Section 707 of the Welfare and Institutions Code as amended by the Three Strikes and Child Protection Act of 2004:*

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

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

(2) (A) If a defendant has *been convicted of a serious felony, as defined in Section 1192.7 as amended by the Three Strikes and Child Protection Act of 2004, or a violent felony, as defined in Section 667.5, as amended by the Three Strikes and Child Protection Act of 2004, and has* two or more prior *serious and/or violent* felony convictions, as defined in ~~paragraph (1) of subdivision (b),~~ *Sections 667.5, 1192.7 or Section 707 of the Welfare and Institutions Code, as amended by the Three Strikes and Child Protection Act of 2004,* that have been pled , ~~and~~ proved, *and that were brought and tried separately* the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of *the following:*

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

(ii) ~~twenty-five years or~~ *Imprisonment in the state prison for 25 years.*

(iii) ~~the~~ *The* term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

~~(d)~~ *(e)* (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as ~~defined in this~~ *amended* ~~section~~ *by the Three Strikes and Child Protection Act of 2004* . 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 felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

~~(e)~~ *(f)* 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).

(g) All references to existing statutes in subdivisions (b) to (f), inclusive, are to statutes as amended by the Three Strikes and Child Protection Act of 2004.

(h) If any provision of subdivisions (a) to (g), 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.

SEC. 9. Amendments to 1192.7 of the Penal Code

Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

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(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter;

(2) mayhem;

(3) rape;

(4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;

(5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;

(6) lewd or lascivious act on a child under the age of 14 years;

(7) any felony *which on the first offense is* punishable by death or imprisonment in the state prison for life;

(8) any felony in which the defendant *specifically intends to* personally ~~inflicts~~ *inflict* great bodily injury on any person, other than an accomplice, *and in which the defendant acts to personally inflict great bodily injury on any person other than an accomplice* or any felony in which the defendant personally uses a firearm;

(9) attempted murder;

(10) assault with intent to commit rape or robbery;

(11) assault with a deadly weapon or instrument on a peace officer;

(12) assault by a life prisoner on a noninmate;

(13) assault with a deadly weapon by an inmate;

(14) arson *as provided in subdivision (a) or (b) of Section 451* ;

(15) exploding a destructive device or any explosive with intent to injure;

(16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;

(17) exploding a destructive device or any explosive with intent to murder;

(18) any burglary of the first degree *as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary* ;

(19) *armed* robbery or bank robbery;

(20) kidnapping;

(21) holding of a hostage by a person confined in a state prison;

(22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;

(23) any felony in which the defendant personally used a dangerous or deadly weapon;

(24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;

(25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;

(26) grand theft involving a firearm;

(27) carjacking;

~~(28) Any felony offense, which would also constitute a felony violation of Section 186.22;~~

~~(29)~~ *(28)* assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;

~~(30)~~ *(29)* throwing acid or flammable substances, in violation of Section 244;

~~(31)~~ *(30)* assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;

~~(32)~~ *(31)* assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5;

~~(33)~~ *(32)* discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;

~~(34)~~ *(33)* commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;

~~(35)~~ *(34)* continuous sexual abuse of a child, in violation of Section 288.5;

~~(36)~~ *(35)* shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034;

~~(37)~~ *(36)* intimidation of victims or witnesses, in violation of *subdivision (c) of* Section 136.1;

~~(38)~~ *(37)* ~~criminal threats in violation of Section 422;~~

~~(39)~~ *(38)* any attempt to commit a crime listed in this subdivision other than an assault *or burglary* ;

~~(40)~~ *(39)* any violation of Section 12022.53;

~~(41)~~ *(40)* a violation of subdivision (b) or (c) of Section 11418; ~~and~~

~~(42)~~ *(41)* any conspiracy to commit an offense described in this subdivision *, other than assault* .

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 10. Amendments to Section 707 of the Welfare and Institutions Code

Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in Section 602 (a) by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

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A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(2) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained the age of 16 years, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:

(A) The minor has previously been found to have committed two or more felony offenses.

(B) The offenses upon which the prior petition or petitions were based were committed when the minor had attained the age of 14 years.

Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of the above criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

~~(16) Any offense described in Section 1203.09 of the Penal Code.~~

~~(17)~~ *(16)* Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

~~(18)~~ *(17)* Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

~~(19)~~ *(18)* Any felony offense described in *subdivision (c) of* Section 136.1 or *subdivision (b) of Section* 137 of the Penal Code.

~~(20)~~ *(19)* Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

~~(21)~~ *(20)* Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

~~(22)~~ *(21)* Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

~~(23)~~ *(22)* Torture as described in Sections 206 and 206.1 of the Penal Code.

~~(24)~~ *(23)* Aggravated mayhem, as described in Section 205 of the Penal Code.

~~(25)~~ *(24)* Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

~~(26)~~ *(25)* Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

~~(27)~~ *(26)* Kidnapping, as punishable in Section 209.5 of the Penal Code.

~~(28)~~ *(27)* The offense described in subdivision (c) of Section 12034 of the Penal Code.

~~(29)~~ *(28)* The offense described in Section 12308 of the Penal Code.

~~(30)~~ *(29)* Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating cir-

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cumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).

(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:

(A) The minor is alleged to have committed an offense which if committed by an adult would be punishable by death or imprisonment in the state prison for life.

(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 of the Penal Code.

(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:

(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).

(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in any criminal conduct by gang members.

(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.6) of Part 1 of the Penal Code.

(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of any felony offense, when he or she was 14 years of age or older:

(A) Any felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense;

(B) Any felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.6) of Part 1 of the Penal Code; or

(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.

(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to the provisions of this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided for in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within the provisions of this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.

(5) For any offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(e) Any report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

SEC. 11. Release of Qualified Individuals

Any individual sentenced under the prior Three Strikes law, including, but not limited to, paragraph (2) of subdivision (e) of Section 667 of the Penal Code, paragraph (2) of subdivision (c) of Section 1170.12 of the Penal Code, and/or Section 707 of the Welfare and Institutions Code, for an enhanced conviction that would not qualify for enhancement under this statute, shall qualify for resentencing and be remanded to the court of origin for resentencing, subject to the following conditions:

(a) A person who was convicted of a felony and is currently serving an indeterminate term of life in prison for a felony, if the following apply:

(1) The person was sentenced pursuant to Section 667 or 1170.12, or both, of the Penal Code and/or Section 707 of the Welfare and Institutions Code prior to those sections being amended by this act.

(2) The currently charged felony resulting in the imposition of an indeterminate term of life in prison was not described as a violent or serious felony pursuant to this act.

(b) A person who is currently serving an indeterminate term of life in prison for a felony by virtue of a plea, if the following apply:

(1) The person was sentenced pursuant to Section 667 or 1170.12, or both, of the Penal Code, and/or Section 707 of the Welfare and Institutions Code, prior to those sections being amended by this act.

(2) The currently charged felony resulting in the imposition of an indeterminate term of life in prison was not described as a violent or serious felony pursuant to this act.

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

(d) If the court determines that the person was sentenced pursuant to the Three Strikes statutes prior to their amendment by this act, and the person meets the requirements of either subdivision (a) or (b), the court shall order that person to be resentenced, subject to subdivision (f), and in compliance with the sentencing laws as amended by this act.

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

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

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

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

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

(l) Those qualifying individuals shall be remanded to court and re-sentenced within no less than 30 days, and no more than 180 days, of this act becoming effective, unless the qualifying individual personally waives this right during the 180-day time period.

(m) Nothing in this section shall be construed as limiting the grounds for a writ of habeas corpus, or as precluding any other remedy.

(n) Under no circumstances may the resentencing, trial, or retrial of any individual pursuant to this section result in a sentence that is longer than the current sentence.

(o) The provisions of this section are severable. If any provision of this section 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.

SEC. 12. Liberal Construction

This act is an exercise of the public power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate these purposes.

SEC. 13. Severability

The provisions of this act are severable. 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, and to this end the provisions of this act are severable.

SEC. 14. 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 self-executing and given the full force of law.

SEC. 15. Effective Date

This act shall become effective immediately upon its approval by the voters.

SEC. 16. Self-Execution

This act shall be self-executing.

SEC. 17. Amendment

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 vote 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 with the majority of the electors concurring, or

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

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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, repeals, and adds sections to the Health and Safety Code, the Revenue and Taxation Code and the Welfare and Institutions 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

SECTION 1. *Findings and Declaration of Purposes*

(a) Access to hospital trauma and emergency medical services in California is in critical condition. The ability of hospitals and physicians to meet the demand for trauma and emergency services, including necessary follow-up hospital care to patients admitted through emergency rooms, is strained to the breaking point. The lack of adequate urgent care alternatives, particularly for those without insurance or the ability to pay for medical services, puts added stress on hospital emergency departments. Patients often wait for hours in overcrowded emergency rooms for treatment, and seriously injured patients are increasingly being diverted past the nearest hospitals.

(b) The 911 emergency telephone system serves as a lifeline for countless Californians each year. Californians deserve a high quality system that ensures that each emergency call is answered immediately.

(c) Firefighters and paramedics are the first on the scene to provide medical care to accident or disaster victims. The medical care they provide can mean the difference between life and death. They must be appropriately trained and equipped to respond to medical emergencies.

(d) Emergency physicians and on-call physician specialists provide hundreds of millions of dollars of uncompensated medical care annually. As a consequence, fewer doctors are available to provide emergency medical services.

(e) The operation of emergency departments and the provision of emergency and related services costs hospitals many hundreds of millions of dollars annually. These losses have contributed to the closure of 26 hospitals between 1995 and 2003 with a corresponding reduction in emergency care. Other hospitals are threatened with closure or reductions in emergency care. The people intend, by adopting this act, to allocate funds to all hospitals operating licensed emergency departments in the manner specified in order to support and augment hospital emergency services and to help prevent the further erosion of such services. Because all hospitals with emergency rooms have a legal obligation to provide emergency services, all hospitals operating emergency rooms should share state funds available under this act based upon their relative emergency department volume, uncompensated care, provision of charity care, and provision of care to county indigent patients, as specified.

(f) Community clinics are an important part of the emergency medical system and the continuum of emergency care. Community clinics provide services that prevent emergent conditions from developing; reduce unnecessary emergency room use; and also provide follow-up care for patients discharged from the emergency room. This keeps patients from unnecessarily using or returning to the emergency room. However, community clinics are financially threatened by the growing number of uninsured patients they must treat.

(g) Emergency medical care is a vital public service, similar to fire and police services, and is the back-bone of the health care safety net for our communities. By providing high quality trauma and emergency care, lives will be saved and taxpayer costs for healthcare will be reduced.

(h) Currently the state funds the 911 emergency telephone system with a surcharge on telephone calls made within California. A small increase in the existing emergency telephone surcharge, no more than 50 cents per month for households, is appropriate to enhance the delivery of emergency medical care and to help offset the costs of uncompensated emergency medical care in California.

(i) The people of the State of California hereby enact the 911 Emergency and Trauma Care Act to create an ongoing fund to improve the 911 emergency telephone system; to improve the training and equipment of firefighters and paramedics; and to improve, and to preserve and expand access to, trauma and emergency medical care.

(j) The intent of this act is to provide additional funding for emergency medical services for the health and welfare of our residents. Further, existing funding, although inadequate, must be protected and maintained so that the intent of this act is realized.

SECTION 2. *Supplemental Funding for Emergency and Trauma Services*

SEC. 2.1. Section 41020.5 is added to the Revenue and Taxation Code, to read: