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Criminal Sentences. Misdemeanor Penalties. Initiative Statute.

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December 17, 2013**VIA MESSENGER**

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Safe Neighborhoods and Schools Act*


Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "The Safe Neighborhoods and Schools Act." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison
Margaret R. Prinzing
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,


William Lansdowne

Enclosures

RECEIVED

DEC 19 2013

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

December 14, 2013

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Safe Neighborhoods and Schools Act*

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Sincerely,


George Gascon

Enclosures

THE SAFE NEIGHBORHOODS AND SCHOOLS ACT

SECTION ONE. Title.

This Act shall be known as “the Safe Neighborhoods and Schools Act.”

SECTION TWO. Findings and Declarations.

The people of the State of California find and declare as follows:

The People enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, maximize alternatives for non-serious, nonviolent crime, and invest the savings generated from this Act into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment. This Act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.

SECTION THREE. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to:

- (1) Ensure that people convicted of murder, rape, and child molestation will not benefit from this Act.
- (2) Create the Safe Neighborhoods and Schools Fund with 25% of the funds to be provided to the Department of Education for crime prevention and support programs in K-12 schools, 10% of the funds for trauma recovery services for crime victims, and 65% of the funds for mental health and substance abuse treatment programs to reduce recidivism of people in the justice system.
- (3) Require misdemeanors instead of felonies for non-serious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.
- (4) Authorize consideration of resentencing for anyone who is currently serving a sentence for any of the offenses listed herein that are now misdemeanors.
- (5) Require a thorough review of criminal history and risk assessment of any individuals before resentencing to ensure that they do not pose a risk to public safety.
- (6) This measure will save significant state corrections dollars on an annual basis.

Preliminary estimates range from \$150 million to \$250 million per year. This measure will increase investments in programs that reduce crime and improve public safety, such as prevention programs in K-12 schools, victim services, and mental health and drug treatment, which will reduce future expenditures for corrections.

SECTION FOUR.

Chapter 33 (commencing with Section 7599) is added to Division 7 of Title 1 of the Government Code, to read:

Chapter 33. Creation of Safe Neighborhoods and Schools Fund

7599. (a) A fund to be known as the "Safe Neighborhoods and Schools Fund" is hereby created within the State Treasury and, notwithstanding Government Code section 13340, is continuously appropriated without regard for fiscal year for carrying out the purposes of this chapter.

(b) For purposes of the calculations required by Section 8 of Article XVI of the California Constitution, funds transferred to the Safe Neighborhoods and Schools Fund shall be considered General Fund revenues which may be appropriated pursuant to Article XIII B.

7599.1. Funding Appropriation

(a) On or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, the Director of Finance shall calculate the savings that accrued to the state from the implementation of this Act during the fiscal year ending June 30, as compared to the fiscal year preceding the enactment of this Act. In making the calculation required by this subdivision, the Director of Finance shall use actual data or best available estimates where actual data is not available. The calculation shall be final and shall not be adjusted for any subsequent changes in the underlying data. The Director of Finance shall certify the results of the calculation to the Controller no later than August 1 of each fiscal year.

(b) Before August 15, 2016, and before August 15 of each fiscal year thereafter, the Controller shall transfer from the General Fund to the Safe Neighborhoods and Schools Fund the total amount calculated pursuant to subdivision (a).

(c) Monies in the Safe Neighborhoods and Schools Fund shall be continuously appropriated for the purposes of this Act. Funds transferred to the Safe Neighborhoods and Schools Fund shall be used exclusively for the purposes of this Act and shall not be subject to appropriation or transfer by the Legislature for any other purpose. The funds in the Safe Neighborhoods and Schools Fund may be used without regard to fiscal year.

7599.2. Distribution of Monies from the Safe Neighborhoods and Schools Fund

(a) By August 15 of each fiscal year beginning in 2016, the Controller shall disburse monies deposited in the Safe Neighborhoods and Schools Fund as follows:

(1) 25 percent to the State Department of Education, to administer a grant program to public agencies aimed at improving outcomes for public school pupils in kindergarten through 12th grade by reducing truancy and/or supporting students who are at-risk of dropping out of school or are victims of crime.

(2) 10 percent to the Victim Compensation and Government Claims Board, to make grants to trauma recovery centers to provide services to victims of crime pursuant to Government Code section 13963.1.

(3) 65 percent to the Board of State and Community Corrections, to administer a grant program to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system, with an emphasis on programs that reduce recidivism of people convicted of less serious crimes, such as those covered by this measure, and those who have substance abuse and mental health problems.

(b) For each program set forth in paragraphs (1) through (3) above, the agency responsible for administering the programs shall not spend more than five percent of the total funds it receives from the Safe Neighborhoods and Schools Fund on an annual basis for administrative costs.

(c) Every two years, the Controller shall conduct an audit of the grant programs operated by the agencies specified in paragraphs (1) through (3) to ensure the funds are disbursed and expended solely according to this chapter and shall report his or her findings to the Legislature and the public.

(d) Any costs incurred by the Controller and the Director of Finance in connection with the administration of the Safe Neighborhoods and Schools Fund, including the costs of the calculation required by section 7599.1 and the audit required by subsection (c), as determined by the Director of Finance, shall be deducted from the Safe Neighborhoods and Schools Fund before the funds are disbursed pursuant to subsection (a).

(e) The funding established pursuant to this Act shall be used to expand programs for public school pupils in kindergarten through 12th grade, victims of crime, and mental health and substance abuse treatment and diversion programs for people in the criminal justice system. These funds shall not be used to supplant existing state or local funds utilized for these purposes.

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

SECTION FIVE.

Section 459a is added to the Penal Code, to read:

459a. (a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

SECTION SIX.

Section 473 of the Penal Code is hereby amended to read:

473. (a) Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars (\$950), shall be punishable by imprisonment in a county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.

SECTION SEVEN.

Section 476a of the Penal Code is hereby amended to read:

476a. (a) Any person who, for himself or herself, as the agent or representative of another, or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depository, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depository, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170.

(b) However, if the total amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed ~~four hundred fifty dollars (\$450)~~ nine hundred fifty dollars (\$950), the offense is punishable only by imprisonment in the county jail for not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. This subdivision shall not be applicable if the defendant has previously been convicted of a three or more violations of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

(c) Where the check, draft, or order is protested on the ground of insufficiency of funds or credit, the notice of protest shall be admissible as proof of presentation, nonpayment, and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with the bank or depository, person, firm, or corporation.

(d) In any prosecution under this section involving two or more checks, drafts, or orders, it shall constitute prima facie evidence of the identity of the drawer of a check, draft, or order if both of the following occur:

(1) When the payee accepts the check, draft, or order from the drawer, he or she obtains from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. That information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means.

(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

(e) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository, person, firm, or corporation for the payment of a check, draft, or order.

(f) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.

(g) A sheriff's department, police department, or other law enforcement agency may collect a fee from the defendant for investigation, collection, and processing of checks referred to their agency for investigation of alleged violations of this section or Section 476.

(h) The amount of the fee shall not exceed twenty-five dollars (\$25) for each bad check, in addition to the amount of any bank charges incurred by the victim as a result of the alleged offense. If the sheriff's department, police department, or other law enforcement agency collects a fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees the victim may have been assessed. In no event shall reimbursement of the bank charge to the victim pursuant to this section exceed ten dollars (\$10) per check.

SECTION EIGHT.

Section 490.2 is added to the Penal Code, to read:

490.2. (a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950), shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C)

of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

SECTION NINE.

Section 496 of the Penal Code is hereby amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, ~~if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may,~~ if the value of the property does not exceed nine hundred fifty dollars (\$950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of nine hundred fifty dollars (\$950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who

buys or receives any property of a value of nine hundred fifty dollars (\$950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

SECTION TEN.

Section 666 of the Penal Code is hereby amended to read:

666. ~~(a) Notwithstanding Section 490, every person who, having been convicted three or more times of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in a county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.~~

~~(b)~~(a) Notwithstanding Section 490, any person described in subdivision (b) paragraph (1) who, having been convicted of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

~~(1)~~(b) This Subdivision (a) shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (e) of Section 667.5 or subdivision (e) of Section 1192.7 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667, or has a conviction pursuant to subdivision (d) or (e) of Section 368.

~~(2)(c)~~ This ~~subdivision~~ section shall not be construed to preclude prosecution or punishment pursuant to subdivisions (b) to (i), inclusive, of Section 667, or Section 1170.12.

SECTION ELEVEN.

Section 11350 of the Health and Safety Code is hereby amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), ~~or (c), (e),~~ or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

~~(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

~~(e)(b)~~ Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) ~~or (b),~~ the judge may, in addition to any punishment provided for pursuant to subdivision (a) ~~or (b),~~ assess against that person a fine not to exceed seventy dollars (\$70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

~~(d)(c)~~ Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars (\$1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars (\$2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

SECTION TWELVE.

Section 11357 of the Health and Safety Code is hereby amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, ~~or shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code~~ except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100).

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in a county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

SECTION THIRTEEN.

Section 11377 of the Health and Safety Code is hereby amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

~~(b)(1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.~~

~~(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.~~

~~(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.~~

~~(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (8) of subdivision (f) of Section 11057 is guilty of a misdemeanor.~~

~~(e)(b) In addition to any fine assessed under subdivision (b),~~ †The judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SECTION FOURTEEN.

Section 1170.18 is added to the Penal Code, to read:

1170.18. (a) A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this Act had this Act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Sections 459a, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended by this Act.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resented to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Sections 459a, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended by this Act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider:

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

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

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

(c) As used throughout this Code, “unreasonable risk of danger to public safety” means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

(d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. Such person is subject to Section 3000.08 parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released, resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

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

(f) A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this Act had this Act been in effect at the time of the offense may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.

(g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.

(h) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (f).

(i) The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(j) Any petition or application under this section must be filed within three years after the effective date of the Act that added this section or at a later date upon a showing of good cause.

(k) Any felony conviction that is recalled and resentenced under subsection (b) or designated as a misdemeanor under subsection (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(l) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(m) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

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

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

SECTION FIFTEEN. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this Act.

SECTION SIXTEEN. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SECTION SEVENTEEN. Conflicting Initiatives.

(a) This Act changes the penalties associated with certain non-serious, nonviolent crimes. In the event that this measure and another initiative measure or measures relating to the same subject appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void. However, in the event that this measure and another measure or measures containing provisions that eliminate penalties for the possession of concentrated cannabis are approved at the same election, the voters intend such provisions relating to concentrated cannabis in the other measure or measures to prevail, regardless of which measure receives a greater number of affirmative votes. The voters also intend to give

full force and effect to all other applications and provisions of this measure, and such other measure or measures, but only to the extent such other measure or measures are not inconsistent with the provisions of this Act.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SECTION EIGHTEEN. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.