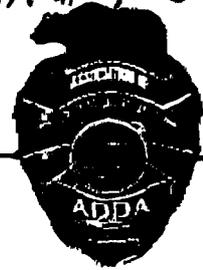


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SA2006RF0005,
PMT, #1, -S



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

January 20, 2006

RECEIVED
JAN 20 2006

Attention: Tricia Knight, Initiative Coordinator

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Modification of Request for Title and Summary, "The Repeat Felon Justice Act of 2006" SA2006RF0005

Dear Ms. Knight:

Please find enclosed with this letter an original and of the text of the proposed initiative measure SA2006RF0005 to be re-titled:

"The Repeat Criminal Offender/ Three Strikes Fair Sentencing Act of 2006"

Other changes to the proposed title have been made to the initiative since its original filing. A full copy of the initiative with these changes has been enclosed. As a proponent, I request that the Attorney General prepare a title and summary for this initiative measure in as expeditious a manner as possible. I can be reached for media inquiries at (213) 700-4133. Please feel free to make this number publicly available for inquiries.

I also request that two additional proponents be added to the initiative. A separate letter has been included regarding this request. Also included are their residence addresses on a separate sheet of paper. Originals of all documents will be mailed to you at the above address.

Very truly yours,

Steven J. Ipsen
President, Association of Deputy District Attorneys*

*Signed and submitted in our individual capacities.

SA2006 RF0005,
Amdt #1-S

**THE REPEAT CRIMINAL OFFENDER/THREE STRIKES
FAIR SENTENCING ACT OF 2006**

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose amendments to the California Penal Code and Vehicle Code, relating to repeat criminal offenders and their sentences, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments (full title and text of the measure) read as follows:

SECTION 1. TITLE

This Act shall be known and may be cited as "The Repeat Criminal Offender/Three Strikes Fair Sentencing Act of 2006."

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California hereby find and declare all of the following:

Although Three Strikes, sex offender statutes, and other laws have helped to reduce California's crime rate since 1993, criminals who commit multiple criminal offenses and criminals who repeat their criminal acts after they have been punished constitute the repeat criminal offender segment of our society and continue to plague California's citizens.

California's laws regulating punishment of repeat criminal offenders must ensure the safety of the public, must be applied in an even-handed and fair manner that is proportionate to the offender's current criminal conduct and his or her prior criminal record, and must keep career criminal offenders locked up as long as they present a threat to society. Our laws must also attempt to reduce recidivism by educating imprisoned felons about the consequences of their repeated criminal behavior. Finally, our laws must permit the release of persons who no longer present a threat to public safety and whose continued incarceration wastes the taxpayers' money.

California's criminal laws for preventing repeat criminal offenses and for punishing repeat criminal offenders and regulating their parole have been enacted in a piecemeal fashion and thus do not provide a complete, proportionate or consistent statutory structure for appropriately and fairly sentencing repeat offenders and preventing their

criminal conduct. The laws giving custody credits to incarcerated criminal offenders that reduce prison sentences for good behavior are inconsistent and have allowed career criminal offenders to manipulate the criminal justice system and delay their trials in order to take unfair advantage of these inconsistencies.

The most important purpose of California's criminal laws is to protect the safety of the citizens of California by appropriately and fairly punishing criminal offenders for their crimes. In order for California's criminal laws to protect the public from repeat criminal offenders, these laws must recognize that repeat offenders present an increased level of threat to the public safety and welfare, that the criminal histories of repeat offenders are an important component in determining the appropriate punishments for their new crimes, that criminals who commit multiple criminal offenses and who continue to commit criminal acts should receive more serious and individually-tailored punishments for these criminal acts, and that paroled criminals must be subjected to lengthier parole supervision and greater consequences when they violate their parole by committing new criminal acts.

California's criminal laws for punishing repeat offenders and preventing their repeated criminal conduct should accurately reflect society's condemnation of that criminal conduct, should aim to reduce and eliminate that conduct by subjecting repeat criminal offenders to parole violations and increased punishment for their new crimes, and should deter others who might want to engage in similar conduct. Individually-tailored punishment for repeat criminal offenders must be based on the facts of their current crimes, their criminal histories, and the likelihood they will continue to commit criminal acts.

Sentences for repeat criminal offenders must not be unfairly harsh. Repeat offenders who do not have a history of violent conduct and who do not continue to commit violent acts should not receive excessively long sentences. These repeat offenders should be sentenced to terms of imprisonment that are fair and just to the offenders, that adequately protect the public safety, and that do not waste the taxpayers' money.

In order to protect the public safety from repeat criminal offenders and to also provide fair and just sentences for these repeat offenders, California needs to adjust its sentencing laws to remove artificial, unnecessary, and judicially-created restrictions on the sentencing of offenders who commit multiple criminal offenses. This statutory structure must also correct the misperception that the criminal offenses listed in the current violent and serious felony lists are the only offenses which are serious and/or violent. Numerous criminal offenses, including "white collar" offenses, that are not included in the current violent and serious felony lists are in fact serious and/or violent crimes. Correcting this misimpression will help ensure that repeat offenders from all economic classes and all ethnic backgrounds who commit serious or violent felonies, as most people understand those terms, receive appropriate punishment. The goal of this improved statutory structure is to ensure appropriate and proportionate individualized punishment for repeat criminal offenders that is fair and just to both those offenders and to the people of California.

The purpose and intent of The Repeat Criminal Offender/Three Strikes Fair Sentencing Act of 2006 is to enact new criminal statutes and to amend existing criminal statutes to achieve this goal.

SECTION 3. Section 17.5 is added to the Penal Code to read:

17.5. (a) Felonies are classified into three categories, as follows:

(1) Class A Felonies. Class A felonies are those felonies that are listed or described in subdivision (c) of Section 667.5, as amended by this Act. A Class A felony may also be listed or described as a Class B felony in subdivision (c) of Section 1192.7. The inclusion of a Class A felony in subdivision (c) of Section 1192.7 does not change its character or the consequences attendant to its character as a Class A felony.

(2) Class B Felonies. Class B felonies are those felonies that are listed or described in subdivision (c) of Section 1192.7 and Section 1192.8, as amended by this Act.

(3) Class C Felonies. Class C felonies are those felonies that are neither Class A nor Class B felonies.

(b) Wherever the term "violent felony" is used in this or any other California statute, that term shall be deemed to read "Class A felony." The term "Class A felony" shall be construed as an alternative description of any felony that is listed or described in subdivision (c) of Section 667.5, as amended by this Act.

(c) Wherever the term "serious felony" is used in this or any other California statute, that term shall be deemed to read "Class B felony." The term "Class B felony" shall be construed as an alternative description of any felony that is listed or described in subdivision (c) of Section 1192.7, as amended by this Act.

(d) The term "Class C felony" shall be construed as an alternative description of any felony that is not listed or described in either subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, as amended by this Act.

(e) The classifications and definitions provided in this section shall apply to any conviction in any other jurisdiction of an offense for which, if committed within this state, the person could have been punished under the laws of this state by imprisonment in the state prison. The determination whether a conviction in another state, government, country, or jurisdiction is a Class A, a Class B, or a Class C felony shall be made by comparing both the statutory elements of the other jurisdiction felony and the conduct of the defendant in the commission of the other jurisdiction felony as contained in the record of conviction of the other jurisdiction felony, with the statutory elements of felonies committed in California. As provided in Section 668, a person with a conviction in any other jurisdiction of an offense for which, if committed within this state, the person could have been punished under the laws of this state by imprisonment in the state prison shall be punishable for any subsequent crime committed within this state in the manner prescribed by law and to the same extent as if that prior conviction had taken place in a court of this state.

(f) The classifications and definitions provided in this section shall apply to any felony conviction without regard to the date of that conviction and without regard to the

sentence imposed, unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor.

SECTION 4. Section 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Gross vehicular manslaughter while intoxicated also includes operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(c) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(d) Any person convicted of violating this section who has one or more prior convictions of this section or of paragraph (1) or (3) of subdivision (c) of Section 192, subdivision (a) or (c) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code, shall be punished by imprisonment in the state prison for a term of 15 years to life. ~~[Article 2.5 (commencing with Section 2030) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term imposed pursuant to this subdivision.]~~

(e) This section shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice consistent with the holding of the California Supreme Court in *People v. Watson*, 30 Cal.3d 290.

(f) This section shall not be construed as making any homicide in the driving of a vehicle or the operation of a vessel punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

(g) For the penalties in subdivision (d) to apply, the existence of any fact required under subdivision (d) shall be alleged in the ~~[information or indictment]~~ accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. The existence of any fact required under subdivision (d) need not be alleged in the felony complaint or proved either at a preliminary examination or a grand jury proceeding as a prerequisite to its being charged in the information or indictment.

SECTION 5. Section 654 of the Penal Code is amended to read:

654. (a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other. Multiple punishment is barred under this section only when a single act involving a single victim violates more than one statute.

(b) Notwithstanding subdivision (a), a defendant sentenced pursuant to subdivision (a) shall not be granted probation if any of the provisions that would otherwise apply to the defendant prohibits the granting of probation.

SECTION 6. INTENT OF SECTION 5.

This amendment of Section 654 provided in Section 5 of this Act is intended to abrogate the "intent and objective" test of *People v. Neal* (1960) 55 Cal.2d 11, and to require that Section 654 be interpreted to permit multiple punishments for multiple criminal acts committed during a single course of conduct regardless of the offender's intent, and to permit multiple punishments for a single criminal act which involves multiple victims.

SECTION 7. 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]~~ Class B felony who previously has been convicted of a ~~[serious]~~ Class B felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any ~~[serious]~~ Class B 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]~~ for which the defendant could have been sentenced pursuant to Section 654, as amended by this Act. 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"]~~ Class B felony means a ~~[serious]~~ felony listed in subdivision (c) of Section 1192.7.

~~[(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.]~~

(b) It is the intent of the Legislature and the People of the State of California in enacting subdivisions (b) to ~~[(#)]~~ (j), inclusive, to ensure longer prison sentences and

greater punishment for those who commit a felony and have been previously convicted of ~~[serious and/or violent]~~ Class A and/or Class B felony offenses.

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

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

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any current or prior offense.

(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) ~~[The]~~ if conduct credits are otherwise authorized by law, 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]~~ 15 percent of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison. The total amount of credits awarded pursuant to Chapter 1 (commencing with Section 4019) of Title 4 of Part 3 shall not exceed 15 percent of the actual period of presentence confinement.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one ~~[serious or violent]~~ Class A or Class B 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]~~ shall be imposed ~~[consecutive]~~ consecutively to any other sentence which the defendant is already serving, unless otherwise provided by law.

(9) The subordinate term for each offense for which a consecutive sentence is imposed pursuant to subdivisions (b) to (j), inclusive, shall consist of a full term of imprisonment for the offense plus a full term of imprisonment for each specific enhancement, as defined in Section 1170.11, applicable to that subordinate offense.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to ~~[(+)]~~ (j), inclusive, a prior conviction of a felony shall be defined as:

(1) Any offense defined or described in subdivision (c) of Section 667.5 as a ~~[violent]~~ Class A felony or any offense defined or described in subdivision (c) of Section 1192.7 as a ~~[serious]~~ Class B felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to ~~[(+)]~~ (j), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect

the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to ~~[(4)]~~ (j), 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.

(E) The commitment to the Department of the Youth Authority or the Division of Juvenile Facilities.

(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]~~ and that includes all of the elements of ~~[the particular]~~ any Class A or Class B felony ~~[as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1102.7].~~

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of ~~[sentence enhancement]~~ subdivisions (b) to (j), inclusive, if:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

~~(B) [The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.~~

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

~~(D) [The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code, or a comparable provision in another jurisdiction, because the [person] juvenile committed an offense [listed in subdivision (b) of Section 707 of the Welfare and Institutions Code] described in paragraph (1) or (2).~~

(e) For purposes of subdivisions (b) to ~~[(4)]~~ (j), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

(1)(A) If a defendant has one prior felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or the minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for ~~the~~ each current felony conviction, and, in the discretion of the court, any applicable specific enhancement as defined in Section 1170.11 may be twice the term otherwise provided as punishment for that enhancement.

(B) Notwithstanding subdivision (b) of Section 1170, if the term otherwise provided as punishment for the current felony conviction is a determinate term of imprisonment and the statute specifies three possible terms, the court shall impose the upper term, unless the court finds and sets forth on the record unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term. In determining whether there are unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term, the court shall consider the facts of the current offenses, the facts of the prior conviction, and the entire record of the defendant.

(2) ~~[(A)]~~ If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for ~~[the]~~ each current felony conviction for any Class A or Class B felony shall be as follows:

(A) Except as provided in subparagraphs (B) to (D), inclusive, an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~[greater]~~ greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction, as described in paragraph (1), subsequent to the two or more prior felony convictions.

(ii) ~~[Imprisonment in the state prison for 25.]~~ Twenty-five 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) If the defendant is convicted of any current Class A felony for which an indeterminate term of life imprisonment is otherwise provided by law, the term for that felony conviction shall be either imprisonment in the state prison for life without the possibility of parole or imprisonment for the term provided in subparagraph (A), in the discretion of the court.

(C) If the defendant is convicted of any current Class A felony for which a determinate term of imprisonment is otherwise provided by law, the court may, in the furtherance of justice, impose a minimum term for the indeterminate life sentence provided in subparagraph (A) of imprisonment in the state prison for 15 years. The reasons for imposing the 15-year minimum term, instead of the presumptive indeterminate term provided in subparagraph (a), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(D) If the defendant is convicted of any current Class B felony that is not also included in subdivision (c) of Section 667.5, and for which a determinate term of imprisonment is otherwise provided by law, the court may, in the furtherance of justice, impose either a minimum term for the indeterminate life sentence provided in subparagraph (A) of imprisonment in the state prison for 15 years, or a determinate term in the state prison that is three times the upper term otherwise provided as punishment for that felony. The reasons for imposing either of these terms, instead of the presumptive indeterminate term provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(3) If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for each current felony conviction for any Class C felony shall be as follows:

(A) Except as provided in subparagraph (B), an indeterminate term of life imprisonment, with a minimum term of the indeterminate sentence calculated, in the discretion of the court, as either:

(i) Three times the upper term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions; or

(ii) Fifteen years.

(B) If the defendant is convicted of a Class C felony for which a determinate term of imprisonment is otherwise provided by law, the court may, in the furtherance of justice, impose a determinate term of imprisonment in the state prison for nine years or

imprisonment for three times the upper term otherwise provided as punishment for that felony, whichever is greater. The reasons for imposing the determinate term, instead of the presumptive indeterminate term provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(4) If any specific enhancement defined in Section 1170.11 is alleged in conjunction with a current felony offense subject to punishment of three times the term otherwise provided for that felony under paragraph (2) or (3) and is determined to be true, the term for that enhancement may, in the discretion of the court, be a term that is three times the term otherwise provided as punishment for that enhancement.

(5) Notwithstanding any other provision of law, a defendant serving an indeterminate term of imprisonment pursuant to this subdivision shall not receive work or conduct credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, Section 4019 of Chapter 1 of Title 4 of Part 3, or any other provision of law.

~~[(B)]~~ (6) The ~~[indeterminate term]~~ terms described in ~~[subparagraph (A)]~~ this subdivision shall be served ~~[consecutive]~~ consecutively 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)]~~ this subdivision 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 provision of law, subdivisions (b) to ~~[(4)]~~ (j), inclusive, shall be applied in every case in which a defendant has a prior felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) ~~[(The)]~~ Except as provided in paragraph (3), the prosecuting attorney may move to dismiss or strike a prior felony conviction allegation either in the furtherance of justice pursuant to Section 1385~~½~~ or if there is insufficient evidence to prove the prior conviction. ~~[If upon the satisfaction of]~~ Except as provided in paragraph (3), if the court is satisfied that justice would be furthered, as described in subdivision (h), or there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(3) No judge or magistrate shall strike or order to be dismissed, pursuant to Section 1385, a prior conviction as defined in subdivision (d) alleged in conjunction with any current Class A or Class B felony offense or a finding bringing a person within the provisions of subdivision (e) on any current Class A or Class B felony. This paragraph shall not apply to additional prior convictions based on the same crime, when at least one prior conviction based on that crime is used to impose punishment under subdivision (e).

(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) In making any discretionary sentencing choice described in subdivision (e), or in determining whether to exercise the discretionary power described in subdivision (f), the court shall consider the nature and circumstances of the current offenses, the nature

and circumstances of the defendant's prior Class A and Class B felony convictions, and the particulars of the defendant's background, character, and prospects. In determining whether justice would be furthered by the exercise of any discretionary powers described in subdivisions (e) and (f), protecting the safety of the public shall be the most important consideration.

(j) All references to existing statutes in subdivisions (c) to ~~[(g)]~~ (h), inclusive, are to statutes as they existed on ~~[June 30, 1993]~~ the effective date of this Act, including amendments made to those statutes by this Act.

~~[(h)]~~ (j) If any provision of subdivisions (b) to ~~[(h)]~~ (j), 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.

~~[(k)]~~ (k) 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. However, the Legislature may amend the provisions of this section to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

SECTION 8. Section 667.1 of the Penal Code is amended to read as follows:

667.1. ~~[Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (e) 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.]~~

(a) Notwithstanding the provisions of subdivision (a) of Section 1170.1 or of any other law, the term for each offense for which a consecutive sentence is imposed upon any person who has suffered a prior felony conviction that has been pled and proved shall consist of a full term of imprisonment for the offense and shall include the full term of imprisonment imposed for each specific enhancement applicable to that consecutively-sentenced offense, without regard to whether the consecutive sentence is imposed in a single case or in multiple cases. The one-third the mid-term sentence calculation formula of subdivision (a) of Section 1170.1 shall not apply to any person who has suffered a felony conviction prior to the commission of the offense that results in the imposition of a consecutive sentence.

(b) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law.

(c) The determination of whether a prior conviction is a prior 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, converted the felony to a misdemeanor.

SECTION 9. Section 667.2 is added to the Penal Code to read:

667.2 (a) In addition to any other applicable enhancement or punishment provisions, a defendant who is convicted of the commission of any current felony, and who has suffered two or more prior convictions of Class C felonies that have resulted in either two or more separate grants of felony probation or one or more terms of imprisonment in the state prison, and that have been pled and proved, shall be punished as follows:

(1) The determinate term, or the minimum term of an indeterminate term, shall be twice the term otherwise provided as punishment for each current felony conviction. If any specific enhancement as defined in Section 1170.11 is alleged in conjunction with a current felony offense and is determined to be true, the sentence for that enhancement may be twice the term otherwise provided as punishment for that enhancement, in the discretion of the court.

(2) Notwithstanding subdivision (b) of Section 1170, if the term otherwise provided as punishment for a current felony conviction is a term of imprisonment in the state prison and the statute specifies three possible terms, the court shall order imposition of the upper term, unless the court finds and sets forth on the record circumstances in mitigation that justify imposition of the middle or lower term or suspension of the imposition of sentence. In determining whether there are circumstances in mitigation that justify imposition of the middle or lower term or suspension of the imposition of sentence, the court shall consider the facts of the current offenses, the facts of the prior conviction, and the entire record of the defendant.

(b) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law.

(c) A term of imprisonment in the state prison shall include 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.

(d) 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 shall be deemed a term of imprisonment in the state prison.

(e) The determination of whether a prior conviction is a prior 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, converted the felony to a misdemeanor.

(f) If an act or omission is punishable in different ways by this section and other provisions of law, the act or omission shall be punished under the provision that provides for the longest potential term of imprisonment, including enhancements.

SECTION 10. Section 667.3 is added to the Penal Code to read:

667.3. (a) Except as provided in subdivision (c), in addition to any other applicable enhancement or punishment provisions, a person who is convicted of any current felony

offense and who has one prior conviction for a Class A felony listed in subdivision (b) that has been pled and proved, shall be punished by imprisonment in the state prison for a term of 25 years to life.

(b) This section shall apply to the following Class A offenses as a prior conviction:

(1) A violation of Section 187 (murder).

(2) A violation of Section 220 (assault with intent to commit a specified felony).

(3) A violation of paragraph (2) of subdivision (a) of Section 261 (forcible rape).

(4) A violation of paragraph (6) of subdivision (a) of Section 261 (rape by threat).

(5) A violation of paragraph (1) of subdivision (a) of Section 262 (forcible spousal rape).

(6) A violation of paragraph (4) of subdivision (a) of Section 262 (spousal rape by threat).

(7) A violation of Section 264.1 (rape or sexual penetration in concert).

(8) A violation of Section 269 (aggravated sexual assault of child).

(9) A violation of paragraph (1) of subdivision (c) of Section 286 (sodomy of child).

(10) A violation of paragraph (2) of subdivision (c) of Section 286 (sodomy by force).

(11) A violation of paragraph (3) of subdivision (c) of Section 286 (sodomy by threat).

(12) A violation of subdivision (d) of Section 286 (sodomy in concert).

(13) A violation of subdivision (a) of Section 288 (lewd act on child).

(14) A violation of paragraph (1) of subdivision (b) of Section 288 (lewd act by force or threat).

(15) A violation of Section 288.5 (continuous sexual abuse of child).

(16) A violation of paragraph (1) of subdivision (c) of Section 288a (oral copulation of child).

(17) A violation of paragraph (2) of subdivision (c) of Section 288a (forcible oral copulation).

(18) A violation of paragraph (3) of subdivision (c) of Section 288a (oral copulation by threat).

(19) A violation of subdivision (d) of Section 288a (oral copulation in concert).

(20) A violation of paragraph (1) of subdivision (a) of Section 289 (sexual penetration by force).

(21) A violation of paragraph (2) of subdivision (a) of Section 289 (sexual penetration by threat).

(22) Any felony punishable by death or imprisonment in the state prison for life.

(c) If the defendant is convicted pursuant to this section of any current felony for which a determinate term of imprisonment is otherwise provided by law, the court may, in addition to any other applicable enhancement or punishment provisions and in the furtherance of justice, impose either an indeterminate term of life imprisonment, with a minimum term of the indeterminate sentence calculated at three times the upper term otherwise provided as punishment for that current felony conviction, or a determinate sentence that is three times the upper term otherwise provided as punishment for that current felony conviction. The reasons for imposing either of these terms, instead of the presumptive indeterminate term provided in subdivision (a), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(d) In determining whether to exercise its power pursuant to Section 1385 in any case described in this section, either upon the motion of the court or upon the motion or

request of any party, the court shall consider the nature and circumstances of the current offenses, the nature and circumstances of the defendant's prior felony convictions, and the particulars of the defendant's background, character, and prospects. In determining whether justice would be furthered by the dismissal or striking pursuant to Section 1385 of a prior felony conviction listed in subdivision (b), protecting the safety of the public shall be the most important consideration.

(e) If an act or omission is punishable in different ways by this section and other provisions of law, the act or omission shall be punished under the provision that provides for the longest potential term of imprisonment, including enhancements.

SECTION 11. 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]~~ Class A felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a ~~[three-year]~~ ten-year term for each prior separate prison term served by the defendant where the prior offense was one of the ~~[violent]~~ Class A 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"]~~ Class A 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]~~ as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation ~~[by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person]~~ as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd ~~[acts on a child under the age of 14 years-]~~ or lascivious acts as defined in subdivision (a) or (b) of Section 288.

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

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

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

(11) ~~[The offense]~~ Sexual penetration as defined in subdivision (a) or (j) 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]~~ a specified felony, 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]** Rape, spousal rape, or sexual penetration, in concert, in 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, 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.

(24) A violation of Section 210.5.

The Legislature ~~[finds and declares]~~ and the People of the State of California find and declare 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~~ that includes all of the elements of ~~[the particular]~~ any felony as defined under California law if the defendant served ~~[one year or more]~~ a term 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]~~ Secretary of the Department of Corrections and Rehabilitation is incarcerated at a facility operated by the ~~[Department of the Youth Authority]~~ Division of Juvenile Facilities, 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.]~~

SECTION 12. Section 667.7 of the Penal Code is amended to read:

667.7. (a) Any person convicted of a felony in which the person inflicted great bodily injury as provided in Section 12022.53 or 12022.7, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; a violation of subdivision (a) of Section 289 where 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; kidnapping as punished in former subdivision (d) of Section 208, or for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; ~~[assault with intent to commit murder; assault with a deadly weapon;]~~ carjacking involving the use of a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, sexual penetration in violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a destructive device with intent to murder in violation of Section 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which the person inflicted great bodily injury as provided in Section 12022.53 or 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall, in addition to any other applicable enhancements or punishment provisions, be punished as follows:

(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for 25 years to life ~~[and shall not be eligible for release on parole for 20 years, or 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, whichever is greatest. Article 2.5 (commencing with Section 2030) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time].~~

(2) Any person convicted of a felony specified in this subdivision who has served three or more prior separate prison terms, as defined in Section 667.5, for the crimes specified in subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole or punishment under any other applicable provision of law which provides for a greater punishment. ~~[No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction.]~~ As used in this section, a commitment to the Department of the Youth Authority or the Division of Juvenile Facilities after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~[jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury]~~ trier of fact.

SECTION 13. Section 667.75 of the Penal Code is amended to read:

667.75. Any person convicted of a violation of Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code who has previously served two or more prior separate prison terms, as defined in Section 667.5, for a violation of ~~[Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code, may]~~ any of those offenses, shall, in addition to any other applicable enhancements or punishment provisions, be punished by imprisonment in the state prison for 20 years to life ~~[and shall not be eligible for release on parole for 17 years, or 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, whichever is greatest. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction].~~ As used in this section, a commitment to the Department of the Youth Authority or the Division of Juvenile Facilities after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~[jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury]~~ trier of fact.

SECTION 14. Section 969a of the Penal Code is amended to read:

969a. (a) Whenever it shall be discovered that a pending indictment or information does not charge all prior felonies of which the defendant has been convicted either in this State or elsewhere, said indictment or information may be forthwith amended to charge such prior conviction or convictions, and if such amendment is made it shall be made upon order of the court, and no action of the grand jury (in the case of an indictment) shall be necessary. Notwithstanding any other provision of law, the pending indictment or information may be amended in the discretion of the court at any time prior to judgment, including after discharge of the jury in a jury trial, after the verdict of the court in a non-jury trial, or after the entry of a guilty or no contest plea.

(b) Defendant shall promptly be rearraigned on such information or indictment as amended and be required to plead thereto.

(c) The amendment to this section is intended to abrogate the holding of People v. Tindall (2000) 24 Cal.4th 757.

SECTION 15. Section 1025 of the Penal Code is amended to read:

1025. (a) When a defendant who is charged in the accusatory pleading with having suffered a prior conviction pleads either guilty or not guilty of the offense charged against him or her, he or she shall be asked whether he or she has suffered the prior conviction. If the defendant enters an admission, his or her answer shall be entered in the minutes of the court, and shall, unless withdrawn by consent of the court, be conclusive of the fact of his or her having suffered the prior conviction in all subsequent proceedings. If the defendant enters a denial, his or her answer shall be entered in the minutes of the court. The refusal of the defendant to answer is equivalent to a denial that he or she has suffered the prior conviction.

(b) Except as provided in subdivision (c), or in subdivision (a) of Section 969a, the question of whether or not the defendant has suffered the prior conviction shall be tried by the jury that tries the issue upon the plea of not guilty, or in the case of a plea of guilty or nolo contendere, by a jury impaneled for that purpose, or by the court if a jury is waived.

(c) Notwithstanding the provisions of subdivision (b), the question of whether the defendant is the person who has suffered the prior conviction shall be tried by the court without a jury.

(d) Subdivision (c) shall not apply to prior convictions alleged pursuant to Section 190.2 or to prior convictions alleged as an element of a charged offense.

(e) If the defendant pleads not guilty, and answers that he or she has suffered the prior conviction, the charge of the prior conviction shall neither be read to the jury nor alluded to during trial, except as otherwise provided by law.

(f) Nothing in this section alters existing law regarding the use of prior convictions at trial.

SECTION 16. Section 1170.12 of the Penal Code is amended to read:

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

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

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any current or prior offense.

(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) ~~That~~ If conduct credits are otherwise authorized by law, 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~~ 15 percent of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

The total amount of credits awarded pursuant to Chapter 1 (commencing with Section 4019) of Title 4 of Part 3 shall not exceed 15 percent of the actual period of presentence confinement.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one ~~[serious or violent]~~ Class A or Class B 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]~~ shall be imposed ~~[consecutive]~~ consecutively to any other sentence which the defendant is already serving, unless otherwise provided by law.

(9) The subordinate term for each offense for which a consecutive sentence is imposed pursuant to this section shall consist of a full term of imprisonment for the offense plus a full term of imprisonment for each specific enhancement, as defined in Section 1170.11, applicable to that subordinate offense.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as:

(1) Any offense defined or described in subdivision (c) of Section 667.5 as a ~~[violent]~~ Class A felony or any offense defined or described in subdivision (c) of Section 1192.7 as a ~~[serious]~~ Class B felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of this section:

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

(B) The stay of execution of sentence.

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

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(E) The commitment to the Department of the Youth Authority or the Division of Juvenile Facilities.

(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]~~ and that includes all of the elements of ~~[the particular]~~ any Class A or Class B felony ~~[as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7].~~

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of ~~[sentence enhancement]~~ this section if:

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

(B) ~~[The prior offense is~~

~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~
~~(ii) listed in this subdivision as a felony, and~~
~~(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and~~
~~(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code, or a comparable provision in another jurisdiction, because the [person] juvenile committed an offense [listed in subdivision (b) of Section 707 of the Welfare and Institutions Code] described in paragraph 1 or 2.~~

(c) For purposes of this section, and in addition to any other ~~[enhancements]~~ enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

(1) ~~(A)~~ If a defendant has one prior felony conviction as defined in subdivision (b) that has been pled and proved, the determinate term or the minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for [the] each current felony conviction, and, in the discretion of the court, any applicable specific enhancement as defined in Section 1170.11 may be twice the term otherwise provided as punishment for that enhancement.

(B) Notwithstanding subdivision (b) of Section 1170, if the term otherwise provided as punishment for the current felony conviction is a determinate term of imprisonment and the statute specifies three possible terms, the court shall impose the upper term, unless the court finds and sets forth on the record unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term. In determining whether there are unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term, the court shall consider the facts of the current offenses, the facts of the prior conviction, and the entire record of the defendant.

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

(A) Except as provided in subparagraphs (B) to (D), inclusive, an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the [greater] greatest of:

(i) [three] Three times the term otherwise provided as punishment for each current felony conviction, as described in paragraph (1), subsequent to the two or more prior felony convictions [or].

(ii) [twenty-five] Twenty-five years [or].

(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) If the defendant is convicted of any current Class A felony for which an indeterminate term of life imprisonment is otherwise provided by law, the term for that felony conviction shall be either imprisonment in the state prison for life without the possibility of parole or imprisonment for the term provided in subparagraph (A), in the discretion of the court.

(C) If the defendant is convicted of any current Class A or Class B felony for which a determinate term of imprisonment is otherwise provided by law, the court may, in the

furtherance of justice, impose a minimum term for the indeterminate life sentence provided in subparagraph (A) of imprisonment in the state prison for 15 years. The reasons for imposing the 15-year minimum term, instead of the presumptive minimum term otherwise provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(D) If the defendant is convicted of any current Class B felony that is not also included in subdivision (c) of Section 667.5, and for which a determinate term of imprisonment is otherwise provided by law, the court may, in the furtherance of justice, impose either a minimum term for the indeterminate life sentence provided in subparagraph (A) of imprisonment in the state prison for 15 years, or a determinate term in the state prison that is three times the upper term otherwise provided as punishment for that felony. The reasons for imposing either of these terms, instead of the presumptive indeterminate term provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(3) If a defendant has two or more prior felony convictions as defined in subdivision (b) that have been pled and proved, the term for each current felony conviction for any Class C felony shall be as follows:

(A) Except as provided in subparagraph (B), an indeterminate term of life imprisonment, with a minimum term of the indeterminate sentence calculated, in the discretion of the court, as either:

(i) Three times the upper term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions; or

(ii) Fifteen years.

(B) If the defendant is convicted of a Class C felony for which a determinate term of imprisonment is otherwise provided by law, the court may, in the furtherance of justice, impose a determinate term of imprisonment in the state prison for nine years or imprisonment for three times the upper term otherwise provided as punishment for that felony, whichever is greater. The reasons for imposing the determinate term, instead of the presumptive indeterminate term provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(4) If any specific enhancement defined in Section 1170.11 is alleged in conjunction with a current felony offense subject to punishment of three times the term otherwise provided for that felony under paragraph (2) or (3) and is determined to be true, the term for that enhancement may, in the discretion of the court, be a term that is three times the term otherwise provided as punishment for that enhancement.

(5) Notwithstanding any other provision of law, a defendant serving an indeterminate term of imprisonment pursuant to this section shall not receive work or conduct credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, Section 4019 of Chapter 1 of Title 4 of Part 3, or any other provision of law

~~(B)~~ (6) The ~~[indeterminate term]~~ terms described in ~~[subparagraph (A) of paragraph (2) of]~~ this subdivision shall be served ~~[consecutive]~~ consecutively 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) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) ~~[The]~~ Except as provided in paragraph 3, the prosecuting attorney may move to dismiss or strike a prior felony conviction allegation either 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]~~ Except as provided in subdivision (3), if the court is satisfied that justice would be furthered, as described in subdivision (f), or there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(3) No judge or magistrate shall strike or order to be dismissed pursuant to Section 1385 a prior conviction as defined in subdivision (b) alleged in conjunction with any current Class A or Class B felony offense or a finding bringing a person within the provisions of subdivision (c) on any current Class A or Class B felony. This paragraph shall not apply to additional prior convictions based on the same crime, when at least one prior conviction based on that crime is used to impose punishment under subdivision (c).

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

(f) In making any discretionary sentencing choice described in subdivision (c), or in determining whether to exercise the discretionary power described in subdivision (d), the court shall consider the nature and circumstances of the current offenses, the nature and circumstances of the defendant's prior Class A and Class B felony convictions, and the particulars of the defendant's background, character, and prospects. In determining whether justice would be furthered by the exercise of any discretionary powers described in subdivisions (c) and (d), protecting the safety of the public shall be the most important consideration.

(g) All references to existing statutes in this section are to statutes as they existed on the effective date of this Act, including amendments made to those statutes by this Act.

(h) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(i) 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. However, the Legislature may amend the provisions of this section to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

(i) It is the intent of the People of the State of California in enacting this section to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of Class A and/or Class B felony offenses.

SECTION 17. Section 1170.125 of the Penal Code is repealed.

~~[1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Section 1170.12 are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by this act.]~~

SECTION 18. Section 1170.14 is added to the Penal Code to read:

1170.14 (a) Notwithstanding subdivision (b) of Section 1170, and unless otherwise provided by statute, when the punishment to be imposed for a current felony conviction is for a determinate term of imprisonment and the statute specifies three possible terms, the upper term shall be the presumptive term for any defendant who has suffered a conviction of any felony prior to the commission of the current felony.

(b) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law.

(c) The determination of whether a prior conviction is a prior 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, converted the felony to a misdemeanor.

SECTION 19. 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~~ Class A or Class B 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.

(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"]~~ Class B 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]~~, in violation of subdivision (c) or (d) of Section 286; (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]~~, in violation of subdivision (c) or (d) of Section 288a; (6) lewd or lascivious act on a child under the age of 14 years or on a dependent person; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which ~~[the defendant]~~ any principal personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which ~~[the defendant]~~ any principal 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; (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]~~ a residence or of any structure or object specified in subdivision (a) of Section 460; (19) 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]~~ any principal personally ~~[used]~~ uses 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]~~ sexual penetration, in violation of subdivision (a) or (j) 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) assault with the intent to commit ~~[mayhem, rape, sodomy, or oral copulation]~~ a specified felony, in violation of Section 220; (30) ~~[throwing acid or flammable substances, in]~~ any violation of Section 244; (31) ~~[assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm, or assault on a peace officer or firefighter, in]~~ any violation of Section 245; (32) ~~[assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in]~~ any violation of [Sections] Section 245.2, 245.3, or 245.5; (33) ~~[discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in]~~ any violation of Section 246; (34) ~~[commission of]~~ rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034; (37) intimidation or dissuasion of victims or witnesses, in violation of Section 136.1, 139, or 140; (38) criminal threats, in violation of Section 422; (39) any

attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; ~~and~~ (42) any conspiracy to commit an offense described in this subdivision; (43) stalking, in violation of Section 646.9; (44) any theft of greater than \$150,000 in which the provisions of paragraph (2) of subdivision (a) of Section 12022.6 are pled and proved; (45) solicitation to commit murder or a designated sexual assault, in violation of subdivisions (b) or (c) of Section 653f; (46) escape by force or violence with great bodily injury not personally inflicted by the defendant, in violation of subdivision (b) of Section 4532; (47) a violation of Section 210.5; (48) aggravated sexual assault of a child, in violation of Section 269; (49) providing a minor for lewd purposes, in violation of Section 266j; (50) child abuse causing death, in violation of Section 273ab; (51) child abuse likely to produce great bodily injury, in violation of subdivision (a) of Section 273a; (52) trainwrecking, in violation of Section 219; (53) elder abuse, in violation of paragraph (1) of subdivision (b) or subdivision (f) of Section 368; (54) manufacturing a controlled substance, in violation of Health and Safety Code Section 11379.6; (55) any burglary in which the defendant is armed with a deadly weapon or assaults any person; (56) a violation of Section 464; (57) any felony specified in Section 1192.8; (58) any felony specified in subdivision (c) of Section 667.5; (59) intentionally killing, mutilating, or torturing a domestic animal, in violation of subdivision (a) of Section 597; (60) fleeing or evading a pursuing peace officer, in violation of Vehicle Code section 2800.2 or 2800.3; (61) a violation of Section 186.10; (62) a violation of Section 502.7 which includes a term imposed pursuant to Section 12022.6; (63) a violation of Section 550 which includes a term imposed pursuant to Section 12022.6; and (64) a violation of Insurance Code section 1871.4 which includes a term imposed pursuant to Section 12022.6.

(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. However, the Legislature may amend the provisions of this section to

expand the definition of offenses that qualify as Class B felonies by a statute passed by a majority vote of each house thereof.

SECTION 20. Statement of Intent in Amending Penal Code Section 1192.7.

It is the intent of the People of the State of California in amending Penal Code Section 1192.7 in Section 19 of this measure that to clarify, improve, and expand the definition of offenses that qualify as Class B felonies. The amendments to paragraph (18) of subdivision (c) of Section 1192.7 that include all residential burglaries as Class B felonies are intended to be declaratory of existing law and to conform the language of subdivision (c) of Section 1192.7 to the decisions of the California Supreme Court in *People v. Jackson* (1985) 37 Cal.3d 826, *People v. Guerrero* (1988) 44 Cal.3d 343, *People v. Myers* (1993) 5 Cal.4th 1193, *People v. Cruz* (1996) 13 Cal.4th 764, and *People v. Avery* (2002) 27 Cal.4th 49, 53 fn. 3, and the decision of the Court of Appeal in *People v. Garrett* (2001) 92 Cal.App.4th 1417.

SECTION 21. Section 1385 of the Penal Code is amended to read:

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

(b) This section does not authorize a judge or magistrate to strike or to order to be dismissed any of the following:

(1) A prior conviction of a [serious] Class B felony for purposes of enhancement of a sentence under paragraph (1) of subdivision (a) of Section 667.

(2) A prior conviction, as defined in subdivision (d) of Section 667 and in subdivision (b) of Section 1170.12, alleged in conjunction with any current Class A or Class B felony offense, or a finding bringing a person within the provisions of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12 on any current Class A or Class B felony. This paragraph shall not apply to additional prior convictions based on the same crime, when at least one prior conviction based on that crime is used to impose punishment under subdivision (e) of Section 667 or subdivision (c) of Section 1170.12.

(c) (1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

SECTION 22. Section 2936 is added to the Penal Code to read:

2936. (a) (1) Notwithstanding any other provision of law, no prisoner in the state prison who is serving a term for an offense committed on or after the effective date of this Act and is otherwise entitled to conduct or work credits pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, or Chapter 1 (commencing with Section 4019) of Title 4 of Part 3, shall receive those conduct or work credits unless the prisoner has first taken and successfully completed a course given or approved by the Department of Corrections and Rehabilitation during his or her current state prison commitment that includes the consequences for a paroled state prisoner for his or her continuing to commit felonies following release on parole.

(2) As soon as possible, and no later than four months following the effective date of this section, the Department of Corrections and Rehabilitation shall offer and prescribe a course to inmates that includes the subjects described in subdivision (a). This course shall be given to all inmates who are eligible for parole, including those inmates who committed an offense prior to the effective date of this Act.

(b) Notwithstanding any other provision of law, the total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 to any person who has served one or more prior separate terms of imprisonment in the state prison, as described in Section 667.5, including terms of incarceration described in subdivisions (f) to (j), inclusive, of Section 667.5, shall not exceed 15 percent of the total term of imprisonment or incarceration imposed. The total amount of credits awarded to such a person pursuant to Chapter 1 (commencing with Section 4019) of Title 4 of Part 3 shall not exceed 15 percent of the actual period of presentence confinement.

(c) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law if the defendant served a term in prison for the offense in the other jurisdiction.

(d) The determination of whether a prior conviction is a prior felony conviction for purposes of subdivision (b) or subdivision (c) 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, converted the felony to a misdemeanor.

(e) The conduct credit limitations provided in this section shall apply only to inmates whose offenses are committed on or after the effective date of this Act.

SECTION 23. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The ~~[Legislature finds and declares]~~ People of the State of California find and declare that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The ~~[Legislature finds as declares]~~ People of the State of California find and declare that it is not the intent of this section to diminish resources allocated to the

Department of Corrections and Rehabilitation for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of ~~[Prison Terms]~~ Parole Hearings to execute its duties with respect to parole functions for which the board is responsible.

(3) The ~~[Legislature finds and declares]~~ People of the State of California find and declare that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) ~~[Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is]~~ The parole period of any person found to be a sexually violent predator shall [not toll, discharge, or otherwise affect that person's] be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) ~~[At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2031 or 2033, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (e) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.~~

~~(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.~~

~~(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be five years. Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.~~

~~(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.]~~

Except as provided in paragraph (2), an inmate released on parole following the service of a sentence for a determinate term of imprisonment shall remain on parole for a period of three years or for a period which is equal to the term of imprisonment imposed for the crime or crimes for which the defendant has been imprisoned and

paroled, including all enhancements, whichever is longer, without any requirement of a showing of good cause therefor. This paragraph also applies to an inmate released on parole following the service of an indeterminate term of imprisonment that is not a life sentence as described in paragraph (3) or (4).

(2) An inmate released on parole following the service of a sentence for a determinate term of imprisonment for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall remain on parole for a period of five years or for a period which is equal to the term of imprisonment imposed for the crime or crimes for which the defendant has been imprisoned and paroled, including all enhancements, whichever is longer, without any requirement of a showing of good cause therefor.

(3) Except as provided in paragraph (4), an inmate released on parole following imprisonment for an indeterminate term of life in prison, including an indeterminate life term of life with a minimum term or a minimum period of confinement prior to parole eligibility, shall remain on parole for the remainder of his or her life.

(4) In the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years. Except as provided in Section 3064, in no case may a person subject to this paragraph be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole. Notwithstanding any other provision of law, when a person subject to this paragraph has been released on parole from the state prison, and has been on parole continuously for six years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(5) Upon the successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision ~~[and paragraphs (1), (2), and (3)]~~ shall be computed from the date of initial parole ~~[or from the date of extension of parole pursuant to paragraph (3)]~~ and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. ~~[However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole or from the date of extension of parole pursuant to paragraph (3).]~~

(6) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to

reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections and Rehabilitation or the Board of ~~[Prison Terms]~~ Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of ~~[Prison Terms]~~ Parole Hearings shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of ~~[Prison Terms]~~ Parole Hearings, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature and the People of the State of California that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SECTION 24. Section 3000.1 of the Penal Code is amended to read:

3000.1. ~~[(a)]~~ In the case of any inmate sentenced under Section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

~~[(b) Notwithstanding any other provision of law, when any person referred to in subdivision (a) has been released on parole from the state prison, and has been on parole continuously for seven years in the case of any person imprisoned for first degree murder, and five years in the case of any person imprisoned for second degree murder, since release from confinement, the board shall, within 30 days, discharge that person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and transmit a copy of it to the parolee.~~

~~[(c) In the event of a retention on parole, the parolee shall be entitled to a review by the board each year thereafter.~~

~~[(d) There shall be a hearing as provided in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.~~

~~[(e) The provisions of Section 3042 shall not apply to any hearing held pursuant to this section.]~~

SECTION 25. Section 3001 of the Penal Code is repealed.

~~[3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.~~

~~—(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) or (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement or since extension of parole, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.~~

~~—(c) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.~~

~~—(d) The amendments to this section made during the 1987-88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of these amendments.]~~

SECTION 26. Section 3007 is added to the Penal Code to read:

3007. (a) The amendments made by this Act to Sections 667 and 1170.12 shall be prospective, except as specifically provided in this section.

(b) (1) Except as limited in paragraphs (5) and (6), any inmate of the Department of Corrections and Rehabilitation who, upon the effective date of this Act, is serving or who has been sentenced, to but has not completed, an indeterminate term of life imprisonment imposed pursuant to subdivision (e) of Section 667 or pursuant to

subdivision (c) of Section 1170.12 for a Class C felony, and who is not also serving or been sentenced to a term of imprisonment for a Class B or Class A felony, may request the Secretary of the Department of Corrections and Rehabilitation, or his or her designee, subject to procedures specified by the Secretary, to recommend to the committing court that the inmate's commitment be recalled pursuant to subdivision (d) of Section 1170, and that the inmate be resentenced pursuant to the provisions of paragraph (3) of subdivision (e) of Section 667, and/or pursuant to paragraph (3) of subdivision (c) of Section 1170.12, as amended by this Act.

(2) Upon receipt of a request from an inmate made pursuant to paragraph (1), the Secretary of the Department of Corrections and Rehabilitation, or his or her designee, and/or the Board of Parole Hearings shall conduct an administrative review to determine whether to grant the inmate's request.

(3) The Secretary of the Department of Corrections and Rehabilitation, or his or her designee, and/or the Board of Parole Hearings shall not grant an inmate's request made pursuant to paragraph (1) unless the Secretary or the Board has first provided written notice to the prosecuting attorney on the Class C commitment offense or offenses and has also provided the prosecuting attorney with an opportunity to submit written opposition to the inmate's request.

(4) Any decision of the Secretary of the Department of Corrections and Rehabilitation, or his or her designee, or the Board of Parole Hearings to deny an inmate's petition shall not be subject to judicial review, except upon a claim that the Secretary or the Board failed to conduct the administrative review specified in paragraph (2). However, the Governor shall have the power to direct that the Secretary and/or the Board grant an inmate's request made pursuant to paragraph (1).

(5) The right to request a recall of a sentence pursuant to paragraph (1) shall be limited to inmates who, on the effective date of this Act, are serving or who have been sentenced to but have not completed an indeterminate term of life imprisonment imposed pursuant to the former provisions of paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, for a Class C felony, and who are not also serving or been sentenced to a term of imprisonment for a current Class A or Class B felony. No other inmate may request a recall of a sentence pursuant to paragraph (1).

(6) No inmate shall have the right to request a recall of a sentence pursuant to paragraph (1), nor shall any inmate receive a recalled sentence pursuant to this section, if any one of the following facts about the inmate is true:

(A) The inmate has a prior conviction for an offense, including an offense with a specific enhancement, that is otherwise punishable by a maximum term of life imprisonment.

(B) The inmate has previously been convicted of a felony offense for which registration is required pursuant to Section 290 of the Penal Code, as that statute existed on the effective date of this Act.

(C) The inmate pled guilty or no contest to the Class C commitment offense in exchange for the dismissal of one or more Class A or Class B offense or offenses.

(7) No inmate serving a term of imprisonment pursuant to paragraph (1) of subdivision (e) of Section 667 or paragraph (1) of subdivision (c) of Section 1170.12 of

the Penal Code shall be eligible to petition for or to receive recall of his or her sentence pursuant to this section.

(c) The Secretary of the Department of Corrections and Rehabilitation, or his or her designee, and/or the Board of Parole Hearings shall consider, but shall not be limited to a consideration of, the following factors in conducting an administrative review pursuant to paragraph (2) of subdivision (b):

(1) The length of time between the inmate's Class C commitment felony or felonies and the inmate's Class A or Class B prior felony convictions.

(2) Whether the inmate's Class C commitment felony or felonies involved any violence or threat of violence.

(3) Whether the inmate remained free of criminal activity in the period between the Class C commitment felony and the prior Class A or Class B convictions.

(4) Whether the inmate's prior convictions involved violence or the threat of violence, or were Class A felonies.

(5) The number of Class A or Class B felonies for which the inmate has been convicted.

(6) Whether the prosecuting attorney opposes or does not object to the inmate's request and the reasons given for such opposition or lack of opposition.

(7) Whether the inmate might present a danger to public safety if released. The Secretary of the Department of Corrections and Rehabilitation, or his or her designee, and/or the Board of Parole Hearings may receive information from the prosecuting attorney or any other person in an in camera proceeding if the Secretary or the Board determines that revealing the information would jeopardize the life or safety of another person.

(8) Whether the inmate's prior conviction for any residential burglary involved the inmate's entry only to the garage of the residence.

(9) Whether the inmate's Class C commitment offense or offenses would have qualified the inmate for medical treatment under the provisions of Section 1210.1 et seq. of the Penal Code.

(10) Whether other offenses were dismissed in exchange for the inmate's guilty or no contest plea to the Class C commitment felony.

(11) Whether the inmate is serving a term of imprisonment for more than one Class C commitment felony.

(12) The nature and circumstances of the inmate's Class C commitment felony or felonies.

(13) The nature and circumstances of the inmate's prior Class A and Class B felonies.

(14) The nature and circumstances of the entire record of the inmate, including all felony and misdemeanor convictions and commitments to state prison.

(15) The behavior of the inmate during any state prison commitment, including whether the inmate engaged in any felonious conduct while incarcerated in state prison on the commitment felony or while incarcerated in county jail awaiting sentencing on the commitment felony.

(16) Whether the Class C commitment felony is an offense for which an alternative punishment to county jail is authorized by law.

(17) Any other fact or particular about the background, character or prospects of the inmate that could reasonably bear on the question whether the inmate is likely to continue to commit criminal offenses if released from custody.

(d) Upon the receipt of a recommendation from the Secretary of the Department of Corrections and Rehabilitation, or his or her designee, and/or the Board of Parole Hearings pursuant to subdivision (d) of Section 1170 and this section, the court shall follow the procedures set forth in Section 1170. In determining whether to recall a commitment and resentence an inmate pursuant to this section, the court shall consider and be guided by the factors itemized in subdivision (b), and shall give great weight to the nature and circumstances of the inmate's prior Class A and Class B felonies and the nature and circumstances of the entire record of the inmate.

(e) If the court determines to recall the commitment and to re-sentence the defendant, the court shall impose sentence as provided in paragraph (3) of subdivision (e) of Section 667, as amended by this Act, and/or paragraph (3) of subdivision (c) of Section 1170.12, as amended by this Act, and shall not exercise the power described in Section 1385 to strike or to order to be dismissed a prior conviction, as defined in subdivision (d) of Section 667 and in subdivision (b) of Section 1170.12, or a finding bringing a person within the provisions of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12.

(f) Any person who committed a Class C felony subject to punishment under the former provisions of paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 prior to the effective date of this Act, and who has not yet been sentenced as of the effective date of this Act, may request, in the discretion of the court, that punishment for that Class C felony be imposed under the provisions of this Act, instead of being imposed under the law applicable to that person at the time the offense was committed. This subdivision shall not apply to any person who would have been ineligible for recall of the sentence under the provisions of this section if the sentence had been imposed prior to the effective date of this Act.

SECTION 27. Section 3041.2 of the Penal Code is amended to read:

3041.2. (a) During the 30 days following the granting, denial, revocation, or suspension by a parole authority of the parole of a person sentenced to an indeterminate prison term ~~[based upon a conviction of murder]~~, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority.

(b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision.

SECTION 28. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of ~~[Prison Terms]~~ Parole Hearings, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections and Rehabilitation shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

~~(c) (1) The board shall hear each case [annually thereafter, except the board may schedule the next hearing no later than the following:~~

~~—(A) Two] two years after any hearing at which parole is denied [if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.~~

~~—(B) Up] , except the board may schedule the next hearing no later than up to five years after any hearing at which parole is denied if [the prisoner has been convicted of murder, and] the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years.~~

~~[(2)] (2) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.~~

~~[(4)] (3) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting~~

forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2) of subdivision (b).

SECTION 29. Section 3057 of the Penal Code is amended to read:

3057. (a) ~~[Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (e)]~~ (1) A parolee whose parole is revoked may be recommitted to prison for the entire amount of time remaining on the parolee's original sentence, including a life term. However, a parolee who has less than one year remaining on his or her original sentence may be confined in prison for up to one additional year for a parole violation.

(2) Notwithstanding any other provision of law, a parolee whose parole is revoked for the commission of a new felony and who is returned to prison shall forfeit all work and conduct credits earned on the commitment for which the parolee had been paroled.

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000, as amended by the Repeat Criminal Offender/Three Strikes Fair Sentencing Act of 2006, which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932. Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is

undertaken: Section 189, Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

(e) Notwithstanding any other provision of law, if a parolee is committed to state prison on a new commitment for the commission of a felony committed while the parolee was on parole, the new commitment shall be served consecutively to the parole revocation, shall be considered to be a separate term of imprisonment, and the length of the new commitment shall be calculated by the court as if the parolee had not been returned to prison on a parole revocation.

(f) The amendments made to this section by this Act shall apply only to persons who committed an offense on or after the effective date of this Act.

SECTION 30. Section 12022.10 is added to the Penal Code to read:

12022.10. Notwithstanding any other provision of law, the enhancements for personal use of a firearm enumerated in subdivision (a) of Section 12022.3, subdivisions (a) and (b) of Section 12022.5, Section 12022.55, and Section 12022.53, shall apply to any person who is a principal in the commission of a felony or attempted felony offense and who at the time of the offense had previously suffered a conviction of any felony, if one or more of the principals has personally used a firearm in the commission of the current offense. The "personal use of a firearm" element of these enumerated enhancements need not be proved as to any defendant who is convicted as a principal in the underlying offense and who has previously been convicted of a felony.

SECTION 31. Section 12022.11 is added to the Penal Code to read:

12022.11. (a) Notwithstanding any other provision of law, the enhancements for personal infliction of great bodily injury, serious bodily injury, or injury, enumerated in subdivision (b) shall apply to any person who is a principal in the commission of a felony or attempted felony offense and who at the time of the offense had previously suffered a conviction of any felony, if one or more of the principals personally inflicted great bodily injury, serious bodily injury, or injury, as applicable, in the commission of the current offense. The "personal infliction of great bodily injury, serious bodily injury, or injury"

element of these enumerated enhancements need not be proved as to any defendant who is convicted as a principal in the underlying offense and who has previously been convicted of a felony.

(b) This section applies to the following enhancements:

- (1) Subdivision (a) of Section 273.4.
- (2) Paragraph (2) of subdivision (a) of Section 347.
- (3) Paragraph (3) of subdivision (2) of Section 368.
- (4) Paragraphs (2) and (3) of subdivision (a) of Section 451.1.
- (5) Paragraphs (2) and (3) of subdivision (a) of Section 452.
- (6) Subdivision (g) of Section 550.
- (7) Subdivision (b) of Section 593a.
- (8) Subdivisions (c) and (d) of Section 600.
- (9) Section 12022.53.
- (10) Section 12022.7.
- (11) Section 12022.8.
- (12) Section 12022.9.
- (13) Section 12022.95.
- (14) Subdivision (b) of Section 11379.7 of the Health and Safety Code.
- (15) Section 11379.9 of the Health and Safety Code.
- (16) Subdivision (e) of Section 25189.5 of the Health and Safety Code.
- (17) Subdivision (c) of Section 25189.7 of the Health and Safety Code.
- (18) Section 23558 of the Vehicle Code.
- (19) Subdivision (c) of Section 23556 of the Vehicle Code.
- (20) Subdivision (c) of Section 14107 of the Welfare and Institutions Code.

SECTION 32. Section 23550 of the Vehicle Code is amended to read:

23550. (a) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of ~~three or more~~ **two** separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of three or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment in the state prison. The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(c) A person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SECTION 33. Section 23550.5 of the Vehicle Code is amended to read:

23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000) if that person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:

(1) A prior violation of Section 23152 that was punished as a felony under Section 23550 or this section, or both, or under former Section 23175 or former Section 23175.5, or both.

(2) A prior violation of Section 23153 that was punished as a felony.

(3) A prior violation of paragraph (1) of subdivision (c) of Section 192 of the Penal Code that was punished as a felony.

(b) Every person who, having previously been convicted of a violation of Section 191.5 of the Penal Code or a felony violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is subsequently convicted of a violation of Section 23152 or 23153 is guilty of a public offense punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000).

(c) The determination of whether a prior conviction is a prior 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, converted the felony to a misdemeanor.

~~(d)~~ (d) The privilege to operate a motor vehicle of a person convicted of a violation that is punishable under subdivision (a) or (b) shall be revoked by the department under paragraph (7) of subdivision (a) of Section 13352, unless paragraph (6) of subdivision (a) of Section 13352 is also applicable, in which case the privilege shall be revoked under that provision. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

~~(e)~~ (e) Any person convicted of a violation of Section 23152 or 23153 that is punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under subdivision (b) of Section 13350.

SECTION 34. DISCLAIMER OF INTENT TO MODIFY PROPOSITION 36.

Except as specifically provided herein, nothing in this Act is intended to affect the right of a defendant to obtain drug treatment pursuant to any applicable provision of the

Substance Abuse and Crime Prevention Act of 2000, as enacted by the electorate at the General Election of November 7, 2000.

SECTION 35. DISCLAIMER OF INTENT TO PRODUCE IMPLIED PUNISHMENT REDUCTIONS.

It is the intent of the People of the State of California in enacting this measure that if any provision in this Act conflicts with another section of law which provides for a greater penalty or longer period of imprisonment that the latter provision shall apply.

SECTION 36. RELATIONSHIP TO "THE SEXUAL PREDATOR PUNISHMENT AND CONTROL ACT; JESSICA'S LAW."

It is the intent of the People of the State of California in enacting Sections 11, 23 and 25 of this measure that the amendments made by this measure to Sections 667.5 and 3000 of the Penal Code that are not also made by "The Sexual Predator Punishment and Control Act: Jessica's Law" and the repeal by this measure of Section 3001 of the Penal Code, shall supplement, complement and not conflict with the amendments made to Sections 667.5, 3000 and 3001 of the Penal Code by "The Sexual Predator Punishment and Control Act: Jessica's Law." This Act and "The Sexual Predator Punishment and Control Act: Jessica's Law" shall be construed as complementary and/or supplementary measures, not competing or conflicting measures.

It is the further intent of the People of the State of California that should this measure and "The Sexual Predator Punishment and Control Act: Jessica's Law" be passed by the electorate in the same election, the amendments to Penal Code Sections 667.5, 3000, and 3001 made by each initiative measure be effective and have the force of law, except to the extent that amendments made by both initiatives expressly conflict with each other and the conflicts cannot be reconciled. An amendment made by only one of these initiative measures shall not be deemed to constitute an express conflict with the initiative measure that does not make the same amendment.

It is the further intent of the People of the State of California in enacting Section 3 of this measure that the alternative designations of violent felonies as "Class A felonies," serious felonies as "Class B felonies," and all other felonies as "Class C felonies," not produce any substantive changes in the manner in which these felonies are treated. Should "The Sexual Predator Punishment and Control Act: Jessica's Law" be passed by the electorate in the same election with more votes than this measure, all "Class A felonies" shall be treated as violent felonies, all "Class B felonies" shall be treated as serious felonies, and all "Class C felonies" shall be treated as the remaining felonies. It is the intent of the People of the State of California in enacting Section 3 of this measure that there be no conflict with the provisions of "The Sexual Predator Punishment and Control Act: Jessica's Law" based on the use of alternative designations for felonies.

SECTION 37. INTENT TO SUPERSEDE "THE THREE STRIKES REFORM ACT OF 2006."

It is the intent of the People of the State of California in enacting this measure that if this measure and "The Three Strikes Reform Act of 2006" or any other measure relating to Three Strikes appears on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to conflict with the "Three Strikes" provisions of this measure. In the event that this measure and any other measure relating to Three Strikes are passed by the electorate in the same statewide election ballot, and this measure receives a greater or the greatest number of affirmative votes, the provisions of this measure relating to Three Strikes shall prevail in their entirety, and the other measure or measures shall be null and void and have no force and effect.

SECTION 38. APPLICATION OF THIS INITIATIVE MEASURE.

Except as specifically provided in Section 26 of this Act, the application of this Act is prospective; its provisions shall apply only to current offenses committed on or after the effective date of this Act; and this Act shall not be construed to benefit any person who committed a crime prior to the effective date of this Act.

SECTION 39. LIBERAL CONSTRUCTION.

This Act is an exercise of the power of the People of the State of California to protect the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate the purpose of this Act as set forth in Section 2 to protect the health, safety, and welfare of the People of the State of California.

SECTION 40. SEVERABILITY.

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

SECTION 41. AMENDMENT.

The provisions of this Act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this Act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.