

CLA Memorandum

TO: Honorable Members FOR IGR COMMITTEE 5/26/06
Intergovernmental Relations Committee

FROM: Gerry F. Miller *MPK* CF: 06-0002-S36
Chief Legislative Analyst Assignment No.: 06-03-0379

SB 1642: Three Strikes Laws

CLA RECOMMENDATION:

Adopt Resolution (Perry-Rosendahl, et al.) to include in the City's 2005-2006 State Legislative Program, SUPPORT of SB 1642 (Romero) which would place on the ballot a reform of the three strikes law to limit the "third strike" to serious or violent felonies.

SUMMARY:

On February 24, 2006, Senator Gloria Romero introduced SB 1642 which would place on the November ballot, a reform of the three strikes law to limit the "third strike" to serious or violent felonies.

Under the three strikes law approved by California voters in 1994 through the passage of Proposition 184, the third strike can be a non-serious and/or non-violent felony. An individual who has one prior felony conviction is subject to a prison term that is twice the term otherwise required by law for a conviction of any new felony. An individual who is convicted of a non-serious or non-violent third felony would be subject to 25 years to life in prison as would someone who is convicted of a serious or violent third felony.

According to state analysis, as of Dec. 31, 2005, there were 40,764 prison inmates sentenced under the three strikes law: 32,951 incarcerated for a "second strike" and 7,813 incarcerated for a "third strike."

Upon the passage of SB 1642 an individual convicted of a third felony that is not serious or violent, would not be subject to the 25 years to life provision, unless the third felony was related to murder, a sex crime, or a major drug trafficking crime. An individual with two prior felony convictions would be subject to the 25 years to life provision only if the third conviction was classified as serious or violent. The bill provides other enhancements for third strikes that do not fall into any of the mentioned categories. In addition, the bill would require re-sentencing for felony offenders who are currently serving life sentences for non-serious or non-violent offenses under the three strikes law.

Under California law, shoplifting and similar crimes are classified as felony petty theft if the person who committed the crime has a prior conviction for any form of theft, including robbery or burglary. As a result, some defendants have been given sentences of 25 years to life in prison for such crimes as shoplifting golf clubs (Gary Ewing), videotapes (Leandro Andrade), or a slice of pepperoni pizza (Jerry Dewayne Williams).

The Los Angeles County District Attorney who co-sponsored the bill has stated that SB 1642 was drafted to prevent a 25 year to life sentence from being imposed upon a defendant who

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RULES & GOVERNMENT

**INTERGOVERNMENTAL
RELATIONS**
MAY 30 2006

commits a minor felony, unless the defendant has a violent criminal history. Mr. Cooley has also launched an initiative to place this proposal on the November ballot.

The California District Attorney's Association (CDAA) opposes SB 1642. In a letter dated May 5, 2006, the CDAA indicates that the three strikes law has been effective as it has reduced crime and in turn increased public safety. Furthermore, the CDAA is concerned with the release of some offenders as a result of resentencing, should SB 1642 be enacted. The CDAA is also concerned that with the passage of SB 1642 crimes such as kidnaping or assault with intent to commit rape would not be subject to the 25 years to life sentence. The Los Angeles District Attorney disagrees.

The California Legislative Analyst's Office (LAO) indicates that SB 1642 would have the following fiscal impacts:

- Net state savings to prison operations potentially in the low tens of millions of dollars initially, increasing to a few million dollars annually.
- Unknown savings for capital outlay associated with prison construction that would otherwise be needed.
- Increased costs potentially in the low tens of millions of dollars annually for jail and court-related costs.

In November 2000, 60.8% of California's voters supported Proposition 36 which amended the three strikes law by providing for drug treatment instead of life in prison for most individuals convicted of drug possession only. In 2004, California voters defeated Proposition 66 which also sought to reform the three strikes law. SB 1642 is

The CLA recommends SUPPORT of SB 1642 which would amend the three strikes law and would result in more resources allocated towards the more serious and violent offenders.

DEPARTMENTS AFFECTED: Los Angeles Police Department

STATUS OF LEGISLATION:

Introduced

February 24, 2006

Last Amended

March 21, 2006

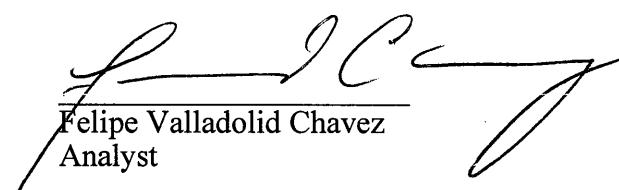
Passed Senate Public Safety

April 4, 2006

Committee

Set for hearing May 25, 2006

Referred to Appropriations Committee


Felipe Valladolid Chavez
Analyst

GFM:SMT:LMO:BKC:FVC

Attachment: 1. Resolution
2. SB 1642

BILL NUMBER: SB 1642 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Romero

FEBRUARY 24, 2006

An act to amend Sections 667, 667.1, 1170.12, and 1170.125 of, and to add Section 1170.126 to, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1642, as introduced, Romero Sentencing: three strikes.

Existing law, as amended by initiative statutes, and commonly referred to as the "three strikes" law, provides for various sentencing enhancements for persons convicted of one or more felonies and who have one or more prior felony convictions for felonies defined as either "serious" or "violent." Existing law provides that for a conviction of a felony with one prior conviction for a serious or violent felony the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction. Existing law provides that a person convicted of a felony who has 2 prior convictions for a serious or violent felony is subject to an indeterminate term of life with a minimum term of the greatest of 3 times the term otherwise provides, 25 years, or the other applicable term.

This bill would provide that if the current felony is not a serious or violent felony the person would be sentenced to the enhancement under the 3 strikes provisions that is applicable to a person with one prior conviction. These provisions would not apply if the current felony is a drug offense, a felony sex offense, involved the use of firearms or deadly weapons, or involved great bodily injury, or if any of the prior offenses was a sexually violent offense, any of certain sex offenses involving a child, homicide, or a serious or violent felony punishable by life imprisonment or death.

The bill would provide a procedure for qualified persons to file a writ of habeas corpus for the purpose of being resentenced to a lesser sentence pursuant to the provisions of the bill. The bill would make other technical amendments.

The bill would provide that it would become effective only when submitted to, and approved by, the voters.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. This act shall be known, and may be cited as, the Three Strikes Reform Act of 2006.

SEC. 2. The Legislature finds and declares the following:

(a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences for a repeat offender who had committed serious or violent felonies, or both.

(b) Proposition 184 did not apply exclusively to enhance the sentences for serious or violent felonies committed by repeat offenders with prior convictions for serious or violent felonies.

(c) Proposition 184 did not establish reasonable criteria for limiting criminal acts that would be prosecuted as third strikes.

(d) Since its enactment, Proposition 184 has been used to enhance as third strikes, thousands of crimes committed by recidivists that were not serious or violent felonies, or both, at an excessive annual cost to taxpayers.

(e) It is the intent of the Legislature in enacting this measure to protect the people from repeat offenders who continue to commit serious or violent felonies, and to continue to provide greater punishment for those previously convicted of serious or violent felonies, or both, while providing reasonable criteria for felonies that may be prosecuted as third strikes.

SEC. 3. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

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

(4) As used in this subdivision, "serious felony" means a 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 in enacting subdivisions (b) to (i), 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 felony offenses.

(c) Notwithstanding any other 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 *serious and/or violent* 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 prior offense.

(3) The length of time between the prior *serious and/or violent* 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 total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

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

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

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent* felony shall be defined as:

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

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

(B) The stay of execution of sentence.

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

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

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by

imprisonment in the state prison. ~~A~~ shall constitute a prior conviction of a particular serious and/or violent felony ~~shall include a~~ if the prior conviction in ~~another~~ the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for purposes of sentence enhancement 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 serious and/or violent 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 because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

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

~~felony conviction~~ convictions:

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

(2) (A) ~~If~~ Except as provided in subparagraph (C), if a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be 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 subsequent to the two or more serious and/or violent prior convictions.

(ii) Imprisonment in the state prison for 25 years.

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

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

(C) If a defendant has two or more prior serious and/or violent felony convictions, as defined in subdivision (d) that have been plead and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e), unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, except for Sections 266, 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, and paragraph (1) of subdivision (b) and subdivision (e) of Section 288a.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (d) for any of the following serious and/or violent felonies:

(I) A "sexually violent offense" as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she, as defined in Section 288a, sodomy with a child who is under 14 years of age and who is more than 10 years younger than he or she, as defined in Section 286, or sexual penetration with a child who is under 14 years of age, and who is more than 10 years younger than he or she, as defined in Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age in violation of Section 288.

(IV) Any homicide offense defined in Sections 187 to 191.5, inclusive.

(V) Any serious or violent felony offense punishable by life imprisonment or death.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior serious and/or violent felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior serious and/or violent felony conviction except as provided in paragraph (2).

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

(g) Prior serious and/or violent 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 *serious and/or violent* felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior *serious and/or violent* felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on ~~June 30, 1993~~ November 8, 2006.

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

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

SEC. 4. Section 667.1 of the Penal Code is amended to read:

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 (c) to (g), inclusive, of Section 667, are to those statutes as they existed on ~~the effective date of this act, including amendments made to those statutes by this act~~ November 8, 2006.

SEC. 5. 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 *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

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

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

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

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

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

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

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

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

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

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

(B) The stay of execution of sentence.

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

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

(2) A *prior* conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison ~~— A~~ shall constitute a prior conviction of a particular *serious and/or violent* felony ~~— shall include a~~ if the prior conviction in ~~— another~~ the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in subdivision (c) of Section 667.5 or *serious felony as defined in subdivision (c) of Section 1192.7.*

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

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

(B) The prior offense is

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

(ii) listed in this subdivision as a *serious and/or violent* 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 because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

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

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

(2) (A) ~~If~~

*Except as provided in subparagraph (C), if a defendant has two or more prior *serious and/or violent* felony convictions, as defined in ~~paragraph (1)~~ of subdivision (b), that have been pled and proved, the term for the current felony conviction shall be 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 subsequent to the two or more prior *serious and/or violent* 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) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) *If a defendant has two or more prior *serious and/or violent* felony convictions, as defined in subdivision (b) that have been pled and proved, and the current offense is not a felony as described in paragraph (1) of subdivision (b), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c), unless the prosecution pleads and proves any of the following:*

(i) *The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.*

(ii) *The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, except for Sections 266, 285, paragraph (1) of subdivision (b) and*

subdivision (e) of Section 286, and paragraph (1) of subdivision (b) and subdivision (e) of Section 288a.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, for any of the following felonies:

(I) A "sexually violent offense" as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she, as defined in Section 288a, sodomy with a child who is under 14 years of age and who is more than 10 years younger than he or she, as defined in Section 286, or sexual penetration with a child who is under 14 years of age, and who is more than 10 years younger than he or she, as defined in Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age in violation of Section 288.

(IV) Any homicide offense defined in Sections 187 to 191.5, inclusive.

(V) Any serious and/or violent felony offense punishable by life imprisonment or death.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has —
one or more prior serious and/or violent
felony ~~conviction~~ convictions, or both,
as defined in this section. The prosecuting attorney shall
plead and prove each prior serious and/or violent
felony conviction except as provided in paragraph (2).

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

(e) Prior serious and/or violent 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 serious and/or violent felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious and/or violent felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(f) If any provision of subdivisions (a) to (e) inclusive, or of Section 1170.126, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions that can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote

entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 6. Section 1170.125 of the Penal Code is amended to read: 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 and 1170.126 are to those statutes as they existed on ~~the effective date of this act, including amendments made to those statutes by this act~~ November 8, 2006 .

SEC. 7. Section 1170.126 is added to the Penal Code, to read: 1170.126. (a) The resentencing provisions under this section are intended to apply exclusively to persons presently serving an indeterminate term of imprisonment pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, whose sentence under the Three Strikes Reform Act of 2006 would not have been an indeterminate life sentence.

(b) Subject to exclusions and limitations set forth below in subdivisions (b) and (c), any person serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 upon conviction, whether by trial or plea, of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, respectively, may file a petition for a writ of habeas corpus, within two years after the effective date of the Three Strikes Reform Act of 2006, before the trial court that entered the judgment of conviction in his or her case, to request resentencing in accordance with the provisions of subdivision (e) of Section 667, or subdivision (c) of Section 1170.12, as those statutes have been amended by the Three Strikes Reform Act of 2006.

(c) No person who is presently serving a term of imprisonment for a "second strike" conviction imposed pursuant to paragraph (1) of subdivision (e) of Section 667 or paragraph (1) of subdivision (c) of Section 1170.12, shall be eligible for resentencing under the provisions of this section.

(d) The petition for a writ of habeas corpus described in subdivision (b) shall specify all the currently charged felonies which resulted in the sentence under paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, or both, and shall also specify all of the prior convictions alleged and proved under subdivision (d) of Section 667 or subdivision (b) of Section 1170.12 or both.

(e) A person who meets the requirements of subdivision (b) may request appointment of counsel by sending to the sentencing court, a written request for representation by counsel to prepare a petition under this section and for purposes of resentencing.

(f) If the court determines that the person filing a petition for writ of habeas corpus is eligible to be resentenced under the criteria set forth in subdivision (b) and is not excluded by the disqualifying factors in subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 and/or subparagraph (C) of paragraph

(2) of subdivision (c) of Section 1170.12, and if the court, in its discretion, determines that relief is warranted, the court shall resentence that persons in accordance with the three strikes statutes as amended by the Three Strike Reform Act of 2006, unless another law provides for a longer sentence.

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

(h) Notwithstanding subdivision (b) of Section 977, a defendant petitioning for resentencing may waive his or her appearance in court for the resentencing, provided that the accusatory pleading is not amended at the resentencing, and that no new trial or retrial of the individual will occur. The waiver shall be in writing and signed by the defendant.

(i) If the judge that originally sentenced the defendant is not available to resentence the defendant, the presiding judge may designate another judge to rule on the defendant's petition.

(j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(k) Nothing in this section is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.

SEC. 8. The Three Strikes Reform Act of 2006 is an exercise of the public power of the People of the State of California for the protection of the health, safety, and welfare of the People of the State of California, and shall be liberally construed to effectuate those purposes.

SEC. 9. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this act, which can be given effect without the invalid provision or application in order to effectuate the purposes of this act. To this end, the provisions of this act are severable.

SEC. 10. Sections 1 to 9, inclusive, affect initiative statutes, and shall become effective only when submitted to, and approved by, the voters of California, pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.