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State Crime Bill Legislation [1]

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STATE OF GEORGIA

OFFICE OF THE GOVERNOR

ATLANTA 30334-0900

Zell Miller
GOVERNOR

Stephen J. Caffarelli
ASSISTANT EXECUTIVE COUNSEL

June 8, 1994

Mr. Greg Taylor
White House Counsel
Room 128
Old Executive Office Building
Washington, D.C. 20500

Dear Mr. Taylor:

Your inquiry to Senator Mark Taylor regarding Governor Miller's crime package has been referred to me for response. I serve as Assistant Executive Counsel to Governor Miller and advise him on legal issues.

Enclosed please find the information you requested including a copy of the sentencing reform bill, statistical information from the Georgia Department of Corrections and various press releases regarding the bill.

I hope you find this information helpful.

Sincerely,

Stephen J. Caffarelli

SJC/cln
cc: Susan Boozer

State
Crime
Bill legislation



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GOVERNOR

REMARKS BY GOVERNOR ZELL MILLER
1994 Crime Proposals
January 5, 1994

I grew up in small town, Georgia, where neighbors knew neighbors. You didn't lock your doors at night, you didn't lock your car if you were lucky enough to have one. It was safe for children to walk to school, and it was safe for teachers to teach in school.

That's the world I grew up in, and for most adults in Georgia, that is what they remember as well.

Now schools are plagued by violence, and that is why I've proposed violence free school zones and other school safety measures. We see kids killing kids, and that is why I want to ban the possession of handguns by those under 18.

We see indescribable viciousness by young offenders, and that is why I plan to treat these hoodlums as adult offenders, with adult time in separate youth facilities.

That's what we plan to do with violent youthful offenders -- tough medicine for a tough disease.

But today we are going to talk about an even more deadly and dangerous strain of that disease: violent adult criminals.

These violent thugs have affected the lives of too many of us. First, of course, are the actual victims of those who choose to rob, rape and kill. My heart goes out to each and every one of those victims and their families.

But we are all touched by the violence.....it is that uneasiness the late night store clerk feels in Carrollton. It is the anxiety the secretary in Savannah feels as she walks alone to the parking garage. It is the fear that shoots through the Mom in Atlanta as she momentarily loses eye contact with her child in a busy mall.

Or that nervousness we've all shared when unknown footsteps walk behind us on any given street.

And there has been a second impact as well. That good, decent, law-abiding citizens are frustrated by a criminal justice system that doesn't work, a system where a 20 year sentence really means just a bunch of words on a piece of paper, and maybe, just maybe, 3 years in a prison cell. Where criminals escape with plea bargains and no time. Where a system seems better at letting criminals go, instead of keeping criminals locked away serving their time.

Our citizens simply don't feel that justice is being served.

I've seen that frustration in every corner of this state. And I have the same frustration. I am frequently asked the same two questions: Why can't violent criminals get tougher sentences?.....And most important, why can't violent criminals just serve the time the judge gives them?

Well, I'm here today to tell you.....they should, they can, and they will.

Today I am proposing a get tough program for violent offenders. It has four parts and will go into effect January 1, 1995.

First, we're going to get tougher on parole. If you commit the violent crimes of armed robbery, kidnapping, aggravated child molestation, rape, aggravated sexual battery, or aggravated sodomy, and the judge sentences you to a specific number of years, you are going to serve every bit of that time. No parole. No loopholes. No exceptions.

I want to end parole for these violent offenders. I want them to serve every year, every month, every day of their sentence -- just like our citizens expect and just like our citizens deserve. In Georgia, if you do the crime, you're gonna do the time.

Second, we're going to get tougher on sentencing. If you are convicted of one of the above violent offenses, you will be subject to a mandatory minimum sentence of 10 years, and you'll serve every moment. If a judge sentences above the minimum, and gives you 15 years, you will serve all 15 years with no chance for parole. If you get a sentence of 20 years, you'll serve all 20 years. With mandatory minimum sentences, longer sentences for violent offenders will now be a reality in Georgia.

Third, we're going to get tougher on repeat offenders. Real tough. Repeat violent offenders must be dealt with harshly. The people of Washington State approved a constitutional amendment which gives life without parole to offenders who commit three violent crimes in their lifetime. The federal government is also looking at this concept called "Three Strikes and You're Out."

I like baseball, but violent crime is not a game. My mother always taught me that folks deserve a second chance, and I've always believed that. But a third chance at violence, a third chance to kill, or rape or commit armed robbery is a completely different matter.

Under my program, if you've been convicted of murder or any of the above listed violent crimes, and you commit a second violent crime, you are gone for life -- you will never get out of a

Georgia prison again. In Georgia, the rule is going to be "2 Strikes and You're Gone."

Finally, we are going to put some teeth in the so-called life sentence. As you know, last year I proposed the option of sentencing murderers to "life without parole" because I was tired of "life" meaning as little as 7 years. Last year's change is now putting away forever some of the worst murderers in the state.

But now we need to get tougher on those murderers and others who receive life sentences WITH the possibility of parole. I think we need to toughen "life" sentences even more. I say double their time -- to 14 years -- before they can even be looked at for parole.

To make these tougher, longer sentences completely enforceable on the Board of Pardons and Paroles and on the courts, a constitutional amendment is necessary. At the same time, I think citizens of Georgia who want tougher, longer sentences ought to have the opportunity to vote on this matter that affects each of us in a very personal way.

In summary, here's the bottom line. We are going to end parole for violent criminals and make them serve the full sentences they receive. And, we're going to have a criminal justice system that's as tough on criminals as they are tough on us.



STATE OF GEORGIA

OFFICE OF THE GOVERNOR

ATLANTA 30334-0900

Zell Miller
GOVERNOR

Rick Dent
DIRECTOR OF COMMUNICATIONS

FACTS ON GOVERNOR MILLER'S SENTENCE REFORM PROPOSAL

What crimes are covered by this proposal?

The offenses of murder, armed robbery, kidnapping, aggravated child molestation, rape, aggravated sodomy and aggravated sexual battery.

What does the proposal do?

1. No parole for persons convicted of one of these offenses and sentenced to a definite term of years. The offender must serve all of the years in prison that the court orders, whether 15 years, 18 years, or 20 years.
2. Offenders convicted of one of these offenses must be sentenced to a mandatory minimum prison term of 10 years, with no chance of parole.
3. A person who has been previously convicted of one of these offenses and is later convicted of one of these offenses must be sentenced to life without parole: "two strikes and you're gone."
4. Doubles the time an offender must serve in prison for murder and other life sentences before even becoming eligible for parole from the current minimum of 7 to 14 years.

When will this proposal take effect?

It will apply to offenses committed on or after January 1, 1995. "Two strikes and you're gone" will apply to second offenses committed on or after January 1, 1995.

Will this proposal result in more criminals serving more time?

Yes. Based on the current average length of time served, rapists, for example, will serve at least 43 percent more time. Aggravated child molesters will serve at least 200 percent more time.

What impact will this proposal on the prison system?

This proposal will have an immediate impact on criminals who commit one of these crimes on or after January 1, 1995. It will have an immediate impact on sentencing after January, 1995.

The impact on the prison system will not be felt until several years when the prisoner starts serving the additional time. For example, an armed robber now has to serve at least five years. Under this proposal an armed robber will serve at least ten years. So the new cost is for the additional five years.

FACTS ON GOVERNOR MILLER'S GEORGIA GETS TOUGH PROGRAM

What crimes are covered by this proposal?

The offenses of murder, armed robbery, kidnapping, aggravated child molestation, rape, aggravated sodomy and aggravated sexual battery.

What does the proposal do?

1. No parole for persons convicted of one of these offenses and sentenced to a definite term of years. The offender must serve all of the years in prison that the court orders, whether 15 years, 18 years, or 20 years.
2. Offenders convicted of one of these offenses must be sentenced to a mandatory minimum prison term of 10 years, with no chance of parole.
3. A person who has been previously convicted of one of these offenses and is later convicted of one of these offenses must be sentenced to life without parole: "two strikes and you're gone."
4. Doubles the time an offender must serve in prison for murder and other life sentences before even becoming eligible for parole from the current minimum of 7 to 14 years.

When will this proposal take effect?

It will apply to offenses committed on or after January 1, 1995. "Two strikes and you're gone" will apply to second offenses committed on or after January 1, 1995.

Will this proposal result in more criminals serving more time?

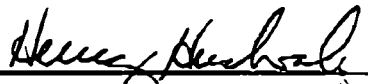
Yes. Based on the current average length of time served, rapists, for example, will serve 43 percent more time.

What impact will this proposal on the prison system?

This proposal will have an immediate impact on criminals who commit one of these crimes on or after January 1, 1995. It will have an immediate impact on sentencing after January 1995.

The impact on the prison system will not be felt until several years when we start paying for the additional sentence. For example, an armed robber now has to serve at least five years. Under this proposal an armed robber will serve at least ten years. So the new cost is for the additional five years.

**1993-1994 TERM OF THE GEORGIA GENERAL ASSEMBLY
CORRECTIONAL LEGISLATION ASSESSMENT**

SB0441 Sentences for violent offenses (goes with SB0395)			
Sponsor(s): Taylor-12 Brown-26 Middleton-50		Committee: Senate Judiciary; fav rept by sub 1-27-94;	
Review Status	Legislation Received	Initial Review Complete	Revision Date
Review Status Date	1-12-94	1-13-94	
Routed to	Harvill, Carr, Aiken		
Analyzed by	Carr		
 Allen L. Ault, Commissioner 2-1-94 Ga Dept of Corrections			
 James T. Morris, Chairman 2-1-94 Board of Pardons & Paroles			
 Henry Huckaby, OPB Director 2-2-94 Office of the Governor			

BRIEF DESCRIPTION OF PROVISIONS

This is a companion to SR0395, the constitutional amendment that would enable the legislation. Each requires the other for either to be operative. Called the "Sentence Reform Act of 1994," they:

- * Would increase from 7 to 14 the number of years a life-sentence inmate would have to serve before first consideration for parole.
- * Targets six additional "serious violent felonies" for additional penalties: armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated child molestation.
- * For the first conviction of any of the six target crimes, would impose a mandatory minimum ten-year term, which could not be probated, nor reduced by parole or any form of earned time or early release. If the judge gives a term longer than ten years, would require the offender to serve the entire sentence.
- * For a second or subsequent conviction of murder or any of the six "serious violent felonies," would impose a minimum term of life without parole.
- * Exempts persons convicted of the six "serious violent felonies" from having their cases examined by the Sentence Review Panel.

IMPACT UPON CORRECTIONS

This bill increases the length of stay of the most dangerous offenders in Georgia. Because they already serve long terms, its impact on the prison population will not begin to be felt until around the end of the century. In the year 2000 it would result in a need for about 300 additional prison bedspaces and an annual cost increase of approximately \$7.3 million. Ten years after impact begins, there would be about four thousand more inmates than there would otherwise be, with an annual cost about \$98 million higher than otherwise. OTIS would need to reject invalid sentences for those crimes, and to prevent them from earning PIC credits.

	Cumulative Extra Pop	Bed Cost Amortized over Twenty Years (mult = 0.093)	Operating Costs	Annual Cost
1999	105	425,012	2,037,029	2,462,040
2000	314	1,267,770	6,076,265	7,344,035
2001	866	3,495,551	16,753,737	20,249,288
2002	1487	6,002,031	28,766,982	34,769,013
2003	2149	8,674,359	41,575,113	50,249,472
2004	2768	11,170,708	53,539,802	64,710,511
2005	3341	13,485,469	64,634,160	78,119,629
2006	3726	15,037,105	72,070,958	87,108,063
2007	4052	16,356,418	78,394,258	94,750,676
2008	4218	17,024,813	81,597,790	98,622,603

RECOMMENDED CORRECTIONS POSITION

Support. The Governor's office, Corrections, and Parole have cooperated in the drafting of this legislation, and will address its fiscal impact in future budgets.

Average time served

	Now	Minimum Will Be	% Increase
Armed Robbery	5.7	10	75
Rape	7.0	10	43
Aggravated Sodomy	4.3	10	133
Agg Sexual Battery*	1.4	10	614
Agg Child Molestation	3.3	10	203
Murder	11.6	14	21 (but we know that 2/3rds will serve more time)

*New crime - small sample

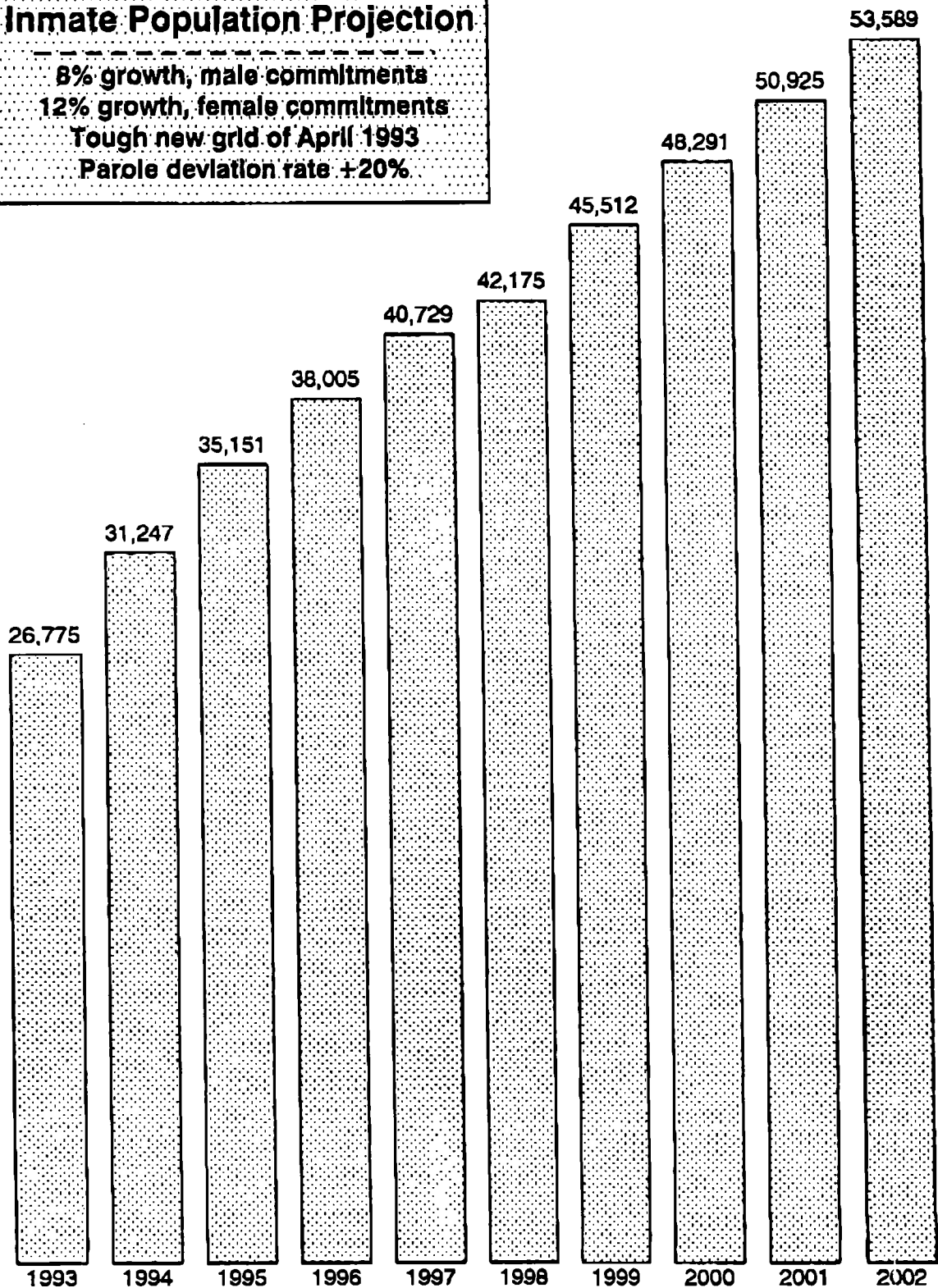
New Beds Being Opened in FY 94: 3,090

New Beds to be Opened in FY 95: 2,326

Total 5,416

Inmate Population Projection

8% growth, male commitments
12% growth, female commitments
Tough new grid of April 1993
Parole deviation rate +20%



GDC Research Unit, 4/21/93

draft working paper ***** draft working paper

Provisional Data Related to Impact Assessment of Sentence Reform Act

Number of Inmates Affected

	Admissions In calendar 1993	Population in December 1993
Murder	250	2447
Kidnapping	118	568
Armed robbery	636	2876
Rape	167	1211
Aggravated sodomy	50	189
Aggravated sexual battery	11	12
Aggravated child molestation	132	511
Total of seven target crimes	1364	7814
Other violent crimes	3120	6742
Total violent crimes	4484	14556
Total non-violent crimes	12431	13038
All crimes	16915	27594
Target as % of all crimes	8.1%	28.3%
Target as % of all violent crimes	30.4%	53.7%
Other violent as % of all violent	69.6%	46.3%
Violent as % of all crimes	26.5%	52.8%

Costs During First Ten Years

	Cumulative Extra Pop	Bed Cost Amortized over Twenty Years (mult = 0.093)	Operating Costs	Annual Cost
1999	105	425,012	2,037,029	2,462,040
2000	314	1,267,770	6,076,265	7,344,035
2001	866	3,495,551	16,753,737	20,249,288
2002	1487	6,002,031	28,766,982	34,769,013
2003	2149	8,674,359	41,575,113	50,249,472
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2007	4052	16,356,418	78,394,258	94,750,676
2008	4218	17,024,813	81,597,790	98,622,603

Extra Population In Year 2008, by provision of Sentence Reform Act

14 years until parole consideration for first conviction of Murder	278
10+ years for first conviction of Armed Robbery	1564
10+ years for first conviction of Rape	588
10+ years for first conviction of Aggravated Sexual Battery	31
10+ years for first conviction of Aggravated Child Molestation	715
10+ years for first conviction of Aggravated Sodomy	165
10+ years for first conviction of Kidnapping	486
Life without parole for "Strike Two"	391
Total extra population In year 2008	4218

Sentence Reform Act: Annual costs in the tenth year **ADMS IMPACT BEGIN**

Crimes in SB0441, SR0395	FY93 ADMS	
1902 Armed robbery	424	
1101 Murder	216	
2001 Rape	143	
2021 Agg. child molestation	140	
1311 Kidnapping	91	
2003 Agg. sodomy	47	
2009 Agg. sexual battery	8	
Total, crimes in SB0441, SR0395	1069	10YRCOSTA \$98,622,603

		Increase	
1302 Agg. assault	601	56.2%	\$55,446,384
1901 Robbery by intimidation	520	48.6%	\$47,973,577
2019 Child molestation	276	25.8%	\$25,462,898
1102 Voluntary manslaughter	162	15.2%	\$14,945,614
2801 Cruelty to children	60	5.6%	\$5,535,413
1123 Vehicular homicide	55	5.1%	\$5,074,128
1305 Agg. battery	50	4.7%	\$4,612,844
1103 Involuntary manslaughter	41	3.8%	\$3,782,532
2018 Statutory rape	40	3.7%	\$3,690,275
1307 Terroristic threats & actions	28	2.6%	\$2,583,193
1992 Crim attempt, armed robbery	25	2.3%	\$2,306,422
1314 Agg. assault against peace officer	22	2.1%	\$2,029,651
1991 Crim attempt, robbery by intimidation	14	1.3%	\$1,291,596
2006 Incest	13	1.2%	\$1,199,339
1308 False imprisonment	7	0.7%	\$645,798
2091 Crim attempt, rape	6	0.6%	\$553,541
2020 Entice child for indecent purposes	4	0.4%	\$369,028
1303 Crim attempt, Agg. assault	3	0.3%	\$276,771
1190 Crim attempt, murder	3	0.3%	\$276,771
1315 Agg. battery against peace officer	2	0.2%	\$184,514
2002 Sodomy	2	0.2%	\$184,514
2023 Sexual assault against inmate	1	0.1%	\$92,257
2093 Crim attempt, Agg. sodomy	1	0.1%	\$92,257
1121 Feticide	1	0.1%	\$92,257
Total, crimes NOT in SB0441, SR0395	1937	181.2%	\$178,701,573

NOT
INCLUDED
IN FINAL
BILL

F.Y.I. Only
(If added to
the bill)

Total annual cost at year 10:

\$277,324,176



STATE OF GEORGIA

OFFICE OF THE GOVERNOR

ATLANTA 30334-0900

Zell Miller
GOVERNOR

Rick Dent
DIRECTOR OF COMMUNICATIONS

REMARKS BY GOVERNOR ZELL MILLER

**Crime Bill Signing
April 21, 1994**

We are here today because Georgia is fighting back.

With today's signing, we launch a campaign to make our homes safer and our streets safer. Today we say, "Enough is enough. Two Strikes And You're Out."

With this signing we place on the November ballot a constitutional amendment that will give us the toughest crime laws in the nation. The state of Georgia has done its work. This package will now be in the hands of the people of Georgia.

Only by putting these tough measures in the Georgia Constitution can we guarantee that no one ever circumvents these laws.

With one dramatic vote the people of Georgia can protect their communities.....and protect their rights as law-abiding citizens.

And when the people overwhelmingly pass this amendment in November they will send a loud and clear message: We will not tolerate violent crime.

The day this legislation passed the General Assembly I said that this was the greatest legislative victory of my career. And I meant every word of that.

Because with this legislation we WILL make a difference in the lives of good, decent, law-abiding Georgians.

.....Georgians who are sick and tired of a criminal justice system that seems to care more about the rights of criminals than the rights of victims.

.....Georgians who are frustrated by a criminal justice system that doesn't work, a system where a 20 year sentence really means just a bunch of words on a piece of paper, and maybe, just maybe, 3 years.

.....Georgians who watch helplessly while criminals escape with plea bargains and no time.

.....Georgians who don't understand why a criminal can't just serve the sentence given in a court of law.

I have the same frustrations. And today this Governor and those Georgians are taking a stand.....We are not going to take it anymore.

The toughest crime package in the nation says "No Parole" for violent criminals. If you commit the violent crimes of rape, armed robbery, kidnapping, and aggravated sexual battery, child molestation and sodomy, you are going to serve the time the judge gives you. No parole. No exception. No loopholes. You will serve every year, every day and every hour of your sentence. Just like it ought to be.

The toughest crime package in the nation provides a tough ten-year mandatory minimum sentence for these violent criminals. No exceptions. Just like it ought to be.

The toughest crime package in the nation says to repeat violent offenders: Two Strikes and You Are Gone Forever. If you commit a second violent offense, Georgia will put you away..... forever. No exceptions. Just like it ought to be.

If you want three strikes in Georgia you'd better join a baseball team.

And the toughest crime package in the nation will double the time before a person sentenced to a life term can even be considered for parole. No exceptions. Just like it ought to be.

What's the bottom line? We are going to end parole for violent criminals, and we're gonna give them longer sentences while we're at it.

For some criminals, their sentences will increase by as much as 200 percent. And for repeat violent offenders, you will die behind bars.

Can we be too tough? Absolutely not. This bill is about justice, justice for the victims of violent crimes, and justice for our communities.

Justice demands tougher sentencing for violent criminals.

Justice demands that a violent criminal actually serve the full sentence he is given in a court of law. And Justice demands we get violent repeat offenders off our streets forever.

Now let's sign the bill and the constitutional amendment. I want to dedicate this to the victims of crime and their families. And I want to dedicate this to the thin blue line: those fine men and women of law enforcement who put their lives on the line for us each and every day.



STATE OF GEORGIA

OFFICE OF THE GOVERNOR

ATLANTA 30334-0900

Zell Miller
GOVERNOR

FACTS ON GOVERNOR MILLER'S SENTENCE REFORM LAWS

What crimes are covered by these laws?

The offenses of murder, armed robbery, kidnapping, aggravated child molestation, rape, aggravated sodomy and aggravated sexual battery.

What do these laws do?

1. No parole for persons convicted of one of these offenses and sentenced to a definite term of years. The offender must serve all of the years in prison that the court orders, whether 15 years, 18 years, or 20 years.
2. Offenders convicted of one of these offenses must be sentenced to a mandatory minimum prison term of 10 years, with no chance of parole.
3. A person who has been previously convicted of one of these offenses and is later convicted of one of these offenses must be sentenced to life without parole: "two strikes and you're gone."
4. Doubles the time an offender must serve in prison for murder and other life sentences before even becoming eligible for parole from the current minimum of 7 to 14 years.

When will these laws take effect?

It will apply to offenses committed on or after January 1, 1995. "Two strikes and you're gone" will apply to second offenses committed on or after January 1, 1995.

The new sentencing laws for violent criminals in Georgia will go into effect following passage of a constitutional amendment for sentence reform by Georgia's voters. The amendment will on the ballot in November, 1994.

Will these laws result in more criminals serving more time?

Yes. Based on the current average length of time served, rapists, for example, will serve at least 43 percent more time. Aggravated child molesters will serve at least 200 percent more time.

SENATE BILL 441

By: Senators Taylor of the 12th, Brown of the 26th,
Middleton of the 50th and others

DO NOT PASS

AN ACT

To provide that persons who are convicted of certain serious violent felonies shall serve minimum terms of imprisonment which shall not be suspended, probated, deferred, or withheld by the sentencing judge and to restrict the granting of paroles, earned time, or other such sentence-reducing measures to persons convicted of certain serious violent felonies; to provide a short title; to provide for legislative findings; to amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to change certain penalty provisions applicable to the crimes of armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery; to amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedures for sentencing and imposition of punishment, so as to change the provisions relating to the fixing of sentences and the suspension or probation of sentences for persons convicted of serious violent felonies; to provide that sentences of imprisonment upon conviction of serious violent felonies shall not be reviewable by a three-judge panel; to define the term "serious violent felony"; to provide for the sentencing and punishment of persons convicted of serious violent felonies; to provide for the punishment of a defendant who has been convicted of a serious violent felony and sentenced to life imprisonment; to provide for the punishment of a defendant who has been convicted of a serious violent felony and sentenced to death but whose sentence of death has been commuted to life



imprisonment; to restrict the authority of the State Board of Pardons and Paroles with respect to the granting of paroles or early release to persons who has been convicted of certain serious violent felonies; to provide an exception; to restrict the authority of the Department of Corrections with respect to the granting of earned time, early release, work release, leave, or other such sentence-reducing measures to persons who have been convicted of certain serious violent felonies; to provide for the meanings of additional terms; to provide that a person who has been convicted previously of a serious violent felony and who thereafter commits a serious violent felony for which such person is not sentenced to death shall be sentenced to life imprisonment without parole; to provide that such sentence shall not be suspended, probated, stayed, deferred, or withheld; to provide that such a person sentenced to life imprisonment without parole shall not be eligible for parole or for any earned time, early release, work release, leave, or other such sentence-reducing measures authorized by law or the Department of Corrections; to amend Article 2 of Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to the granting of pardons, paroles, and other relief, so as to change the provisions relating to restrictions on relief for a person serving a second life sentence; to change the provisions relating to the general rule-making power of the State Board of Pardons and Paroles; to change the provisions relating to the prohibition against the release of certain inmates for the purpose of regulating jail or prison populations; to provide for related matters; to provide for applicability; to provide for severability; to provide a conditional

effective date and for automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. This Act shall be known and may be cited as the "Sentence Reform Act of 1994."

Section 2. The General Assembly declares and finds:

(1) That persons who are convicted of certain serious violent felonies shall serve minimum terms of imprisonment which shall not be suspended, probated, stayed, deferred, or otherwise withheld by the sentencing judge; and

(2) That sentences ordered by courts in cases of certain serious violent felonies shall be served in their entirety and shall not be reduced by parole or by any earned time, early release, work release, or other such sentence-reducing measures administered by the Department of Corrections.

Section 3. Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by striking in its entirety Code Section 16-8-41, relating to the crime of armed robbery, and inserting in lieu thereof a new Code Section 16-8-41 to read as follows:

"16-8-41. (a) A person commits the offense of armed robbery when, with intent to commit theft, he or she takes property of another from the person or the immediate presence of another by use of an offensive weapon, or any replica, article, or device having the

appearance of such weapon. The offense of robbery by intimidation shall be a lesser included offense in the offense of armed robbery.

(b) A person convicted of the offense of armed robbery shall be punished by death or imprisonment for life or by imprisonment for not less than ten nor more than 20 years.

(c) (1) The preceding provisions of this Code section notwithstanding, in any case in which the defendant commits armed robbery and in the course of the commission of the offense such person unlawfully takes a controlled substance from a pharmacy or a wholesale druggist and intentionally inflicts bodily injury upon any person, such facts shall be charged in the indictment or accusation and, if found to be true by the court or if admitted by the defendant, the defendant shall be punished by imprisonment for not less than 15 years.

(2) As used in this subsection, the term:

(A) 'Controlled substance' means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29.

(B) 'Pharmacy' means any place licensed in accordance with Part 4 of Article 2 of Chapter 4 of Title 26 wherein the possessing, displaying, compounding, dispensing, or retailing of drugs may be conducted, including any and all portions of any building or structure leased, used, or controlled by the licensee in the conduct of the business

licensed by the State Board of Pharmacy at the address for which the license was issued. The term pharmacy shall also include any building, warehouse, physician's office, or hospital used in whole or in part for the sale, storage, or dispensing of any controlled substance.

(C) 'Wholesale druggist' means an individual, partnership, corporation, or association registered with the State Board of Pharmacy under Part 4 of Article 2 of Chapter 4 of Title 26.

(d) Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

Section 4. Said title is further amended by striking in its entirety subsection (b) of Code Section 16-5-40, relating to the crime of kidnapping, and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) A person convicted of the offense of kidnapping shall be punished by imprisonment for not less than ten nor more than 20 years, provided that a person convicted of the offense of kidnapping for ransom shall be punished by life imprisonment or by death and provided, further, that, if the person kidnapped shall have received bodily injury, the person convicted shall be punished by life imprisonment or by death. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

Section 5. Said title is further amended by striking in its entirety subsection (b) of Code Section 16-6-1, relating to the crime of rape, and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life, or by imprisonment for not less than ten nor more than 20 years. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

Section 6. Said title is further amended by striking in its entirety subsection (d) of Code Section 16-6-4, relating to the crimes of child molestation and aggravated child molestation, and inserting in lieu thereof a new subsection (d) to read as follows:

"(d) A person convicted of the offense of aggravated child molestation shall be punished by imprisonment for not less than ten nor more than 30 years. Any person convicted under this Code section of the offense of aggravated child molestation shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

Section 7. Said title is further amended by striking in its entirety subsection (b) of Code Section 16-6-2, relating to the crimes of sodomy and aggravated sodomy, and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) A person convicted of the offense of sodomy shall be punished by imprisonment for not less than one

nor more than 20 years. A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by imprisonment for not less than ten nor more than 20 years. Any person convicted under this Code section of the offense of aggravated sodomy shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

Section 8. Said title is further amended by striking in its entirety subsection (c) of Code Section 16-6-22.2, relating to the crime of aggravated sexual battery, and inserting in lieu thereof a new subsection (c) to read as follows:

"(c) A person convicted of the offense of aggravated sexual battery shall be punished by imprisonment for not less than ten nor more than 20 years. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7."

Section 9. Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedures for sentencing and imposition of punishment, is amended by striking in its entirety paragraph (1) of subsection (a) of Code Section 17-10-1, relating to the fixing of sentences and the suspension or probation of sentences, and inserting in lieu thereof a new paragraph (1) to read as follows:

"(1) Except in cases in which life imprisonment, life without parole, or the death penalty may be

imposed, upon a verdict or plea of guilty in any case involving a misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence shall prescribe a determinate sentence for a specific number of months or years which shall be in conformity with any mandatory minimum sentences required by law or shall be within the minimum and maximum prescribed by law as the punishment for the crime. The judge imposing the sentence is granted power and authority to suspend or probate all or any part of the entire sentence under such rules and regulations as the judge deems proper, subject to the conditions set out in this subsection; provided, however, that such action shall be subject to the provisions of Code Section 17-10-6.1."

Section 10. Said article is further amended by striking in its entirety subsection (a) of Code Section 17-10-6, relating to the review of sentences of imprisonment for period exceeding 12 years by a three-judge panel, and inserting in lieu thereof a new subsection (a) to read as follows:

"(a) In any case, except cases in which the death penalty is imposed or cases involving a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1, in which a sentence of 12 or more years, or several consecutive sentences which total 12 or more years, has been fixed and imposed by a judge, without a jury, the defendant shall have the right to have the sentence or sentences reviewed by a panel of three superior court judges to determine whether the sentence or sentences so imposed are excessively harsh. Consideration shall be given in the review to the nature

of the crime for which the defendant has been convicted and to the defendant's prior criminal record. Any defendant seeking a review of such sentence or sentences shall make application therefor within 30 days of the date on which the sentence was imposed by a judge of the superior court or after the remittitur from the Court of Appeals or Supreme Court affirming the conviction is made the judgment of the sentencing court, whichever occurs last. The application shall be filed with the clerk of the superior court in which the sentence was imposed. Upon the filing of an application the clerk shall transmit the same to the three-judge panel created under this Code section within ten days of the date on which the application was filed. For such service, the clerk shall receive the fees prescribed in Code Section 15-6-77 from the funds of the county, except where the clerk is on a salary. It shall be the duty of the judge imposing the sentence and any probation officer to transmit, within ten days of the filing of an application for review of a sentence, a copy of any presentence or postsentence report prepared by the probation officer, including the record of the defendant, to the three-judge panel."

Section 11. Said article is further amended by adding between Code Sections 17-10-6 and 17-10-7 a new Code Section 17-10-6.1 to read as follows:

"17-10-6.1. (a) As used in this Code section, the term 'serious violent felony' means:

(1) Murder or felony murder, as defined in Code Section 16-5-1;

(2) Armed robbery, as defined in Code Section 16-8-41;

(3) Kidnapping, as defined in Code Section 16-5-40;

(4) Rape, as defined in Code Section 16-6-1;

(5) Aggravated child molestation, as defined in Code Section 16-6-4;

(6) Aggravated sodomy, as defined in Code Section 16-6-2; or

(7) Aggravated sexual battery, as defined in Code Section 16-6-22.2.

(b) Notwithstanding any other provisions of law to the contrary, any person convicted of a serious violent felony as defined in paragraphs (2) through (7) of subsection (a) of this Code section shall be sentenced to a mandatory minimum term of imprisonment of ten years and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and shall not be reduced by any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles.

(c) (1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a first conviction of a serious violent felony in which the defendant has been sentenced to life imprisonment, that person shall not be eligible for any form of parole or early release administered by the State Board of Pardons and Paroles until that person has served a minimum of 14 years in prison. The minimum term of imprisonment shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under

programs administered by the Department of Corrections.

(2) For a first conviction of a serious violent felony in which the defendant has been sentenced to death but the sentence of death has been commuted to life imprisonment, that person shall not be eligible for any form of parole or early release administered by the State Board of Pardons and Paroles until that person has served a minimum of 25 years in prison. The minimum term of imprisonment shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections.

(3) Any sentence imposed for the first conviction of any serious violent felony other than a sentence of life imprisonment or life without parole or death shall be served in its entirety as imposed by the sentencing court and shall not be reduced by any form of parole or early release administered by the State Board of Pardons and Paroles or by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court.

(d) For purposes of this Code section, a first conviction of any serious violent felony means that the person has never been convicted of a serious violent felony under the laws of this state or of an offense under the laws of any other state or of the United

States, which offense if committed in this state would be a serious violent felony. Conviction of two or more crimes charged on separate counts of one indictment or accusation, or in two or more indictments or accusations consolidated for trial, shall be deemed to be only one conviction."

Section 12. Said article is further amended by striking in its entirety Code Section 17-10-7, relating to the punishment of repeat offenders, and inserting in lieu thereof a new Code Section 17-10-7 to read as follows:

"17-10-7. (a) Except as otherwise provided in subsection (b) of this Code section, any person convicted of a felony offense in this state or having been convicted under the laws of any other state or of the United States of a crime which if committed within this state would be a felony and sentenced to confinement in a penal institution, who shall afterwards commit a felony punishable by confinement in a penal institution, shall be sentenced to undergo the longest period of time prescribed for the punishment of the subsequent offense of which he or she stands convicted, provided that, unless otherwise provided by law, the trial judge may, in his or her discretion, probate or suspend the maximum sentence prescribed for the offense.

(b) (1) As used in this subsection, the term 'serious violent felony' means a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1.

(2) Any person who has been convicted of a serious violent felony in this state or who has been convicted under the laws of any other state or

of the United States of a crime which if committed in this state would be a serious violent felony and who after such first conviction subsequently commits and is convicted of a serious violent felony for which such person is not sentenced to death shall be sentenced to imprisonment for life without parole. Any such sentence of life without parole shall not be suspended, stayed, probated, deferred, or withheld, and any such person sentenced pursuant to this paragraph shall not be eligible for any form of pardon, parole, or early release administered by the State Board of Pardons and Paroles or for any earned time, early release, work release, leave, or any other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the sentence of life imprisonment without possibility of parole, except as may be authorized by any existing or future provisions of the Constitution.

(c) Except as otherwise provided in subsection (b) of this Code section, any person who, after having been convicted under the laws of this state for three felonies or having been convicted under the laws of any other state or of the United States of three crimes which if committed within this state would be felonies, commits a felony within this state other than a capital felony must, upon conviction for such fourth offense or for subsequent offenses, serve the maximum time provided in the sentence of the judge based upon such conviction and shall not be eligible for parole until the maximum sentence has been served.

(d) For the purpose of this Code section, conviction of two or more crimes charged on separate counts of one indictment or accusation, or in two or more indictments or accusations consolidated for trial, shall be deemed to be only one conviction.

(e) This Code section is supplemental to other provisions relating to recidivous offenders."

Section 13. Reserved.

Section 14. Article 2 of Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to the granting of pardons, paroles, and other relief, is amended by striking in its entirety subsection (b) of Code Section 42-9-39, relating to restrictions on relief for a person serving a second life sentence, and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) Except as otherwise provided in subsection (b) of Code Section 17-10-7, when a person is convicted of murder and sentenced to life imprisonment and such person has previously been incarcerated under a life sentence, such person shall serve at least 25 years in the penitentiary before being granted a pardon and before becoming eligible for parole."

Section 15. Said article is further amended by striking in its entirety Code Section 42-9-45, relating to general rule-making power of the State Board of Pardons and Paroles, and inserting in lieu thereof a new Code Section 42-9-45 to read as follows:

"42-9-45. (a) The board may adopt and promulgate rules and regulations, not inconsistent with this

chapter, touching all matters dealt with in this chapter, including, among others, the practice and procedure in matters pertaining to paroles, pardons, and remission of fines and forfeitures. The rules and regulations shall contain an eligibility requirement for parole which shall set forth the time when the automatic initial consideration for parole of inmates under the jurisdiction of the Department of Corrections shall take place and also the times at which periodic reconsideration thereafter shall take place. Such consideration shall be automatic, and no written or formal application shall be required.

(b) An inmate serving a misdemeanor sentence or misdemeanor sentences shall only be eligible for consideration for parole after the expiration of six months of his or her sentence or sentences or one-third of the time of his or her sentence or sentences, whichever is greater. Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7, an inmate serving a felony sentence or felony sentences shall only be eligible for consideration for parole after the expiration of nine months of his or her sentence or one-third of the time of the sentences, whichever is greater. Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7, inmates serving sentences aggregating 21 years or more shall become eligible for consideration for parole upon completion of the service of seven years.

(c) The board shall adopt rules and regulations governing the granting of other forms of clemency, which shall include pardons, reprieves, commutation of penalties, removal of disabilities imposed by law, and

the remission of any part of a sentence, and shall prescribe the procedure to be followed in applying for them. Applications for the granting of such other forms of clemency and for exceptions to parole eligibility rules established by statute or promulgated by the board shall be made in such manner as the board shall direct by rules and regulations.

(d) All rules and regulations adopted pursuant to this Code section shall be adopted, established, promulgated, amended, repealed, filed, and published in accordance with the applicable provisions and procedure as set forth in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The courts shall take judicial notice of the rules and regulations.

(e) For the purposes of this Code section, the words 'rules and regulations' shall have the same meaning as the word 'rule,' as defined in Code Section 50-13-2, except that the words 'rules and regulations' shall not be construed to include the terms and conditions prescribed by the board to which a person paroled by the board may be subjected.

(f) Except to correct a patent miscarriage of justice and not otherwise, no inmate serving a sentence imposed for any of the crimes listed in this subsection shall be granted release on parole until and unless said inmate has served on good behavior seven years of imprisonment or one-third of the prison term imposed by the sentencing court for the violent crime, whichever first occurs. No inmate serving a sentence for any crime listed in this subsection shall be released on parole for the purpose of regulating jail or prison populations. This subsection shall govern parole

actions in sentences imposed for any of the following crimes: voluntary manslaughter, statutory rape, incest, cruelty to children, arson in the first degree, homicide by vehicle while under the influence of alcohol or as a habitual traffic violator, aggravated battery, aggravated assault, trafficking in drugs, and violations of Chapter 14 of Title 16, the 'Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act.'

(g) No inmate serving a sentence for murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery shall be released on parole for the purpose of regulating jail or prison populations."

Section 16. The provisions of this Act shall apply only to those offenses committed on or after the effective date of this Act; provided, however, that any conviction occurring prior to, on, or after the effective date of this Act shall be deemed a "conviction" for the purposes of this Act and shall be counted in determining the appropriate sentence to be imposed for any offense committed on or after the effective date of this Act.

Section 17. In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would

have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 18. This Act shall become effective on January 1, 1995, upon ratification by the voters of this state at the 1994 November general election of that proposed amendment to Article IV, Section II, Paragraph II of the Constitution authorizing the General Assembly to provide for mandatory minimum sentences and sentences of life without possibility of parole in certain cases and providing restrictions on the authority of the State Board of Pardons and Paroles to grant paroles; provided, however, that if such amendment is not so ratified, this Act shall be null and void and shall stand repealed in its entirety.

Section 19. All laws and parts of laws in conflict with this Act are repealed.

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CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 1568

Introduced by Assembly Member Rainey

(Principal coauthors: Assembly Members Burton, Johnson, Klehs, and Richter)

(Principal coauthors: Senators Kopp, Peace, and Roberti)

(Coauthors: Assembly Members Aguiar, Allen, Alpert, Andal, Boland, Bowler, Connolly, Conroy, Ferguson, Goldsmith, Harvey, Haynes, Horcher, Knight, Martinez, Nolan, Quackenbush, Seastrand, Snyder, Statham, and Weggeland)

(Coauthors: Senators Presley and Russell)

March 4, 1993

An act to amend *and repeal* Sections 667, 667.5, 1170.95, 1192.7, 1385, 2931, and 2933 of, and to repeal *and add* Section 1192.8 of, the Penal Code, relating to sentencing, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1568, as amended, Rainey. Sentencing.

(1) Existing law, added by initiative statute, provides, among other things, that any person who is convicted of a serious felony, as defined, and who has been previously convicted of a serious felony in California, or of any offense committed in another jurisdiction which includes all of the elements of a serious felony, shall receive, in addition to the

sentence imposed for the present felony, a 5-year enhancement for each prior felony conviction on charges brought and tried separately.

This bill would provide, in addition, that (a) any person convicted of a serious felony, as defined, who has 2 or more prior separate convictions for any serious or violent felony, as defined, shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 25 years, (b) any person convicted of a violent felony who has 2 or more prior separate convictions for any violent or serious felony shall be punished by imprisonment in the state prison for life without the possibility of parole, and (c) any person convicted of a serious felony who has 2 or more prior separate convictions for any violent felony shall be punished by imprisonment in the state prison for life without the possibility of parole.

The bill also would provide that any person convicted of any specified sex offense committed against a person under 14 years of age who has been previously convicted of any of those offenses shall be punished by imprisonment in the state prison for life, shall not be eligible for release on parole for 25 years, and shall not be released on parole prior to serving at least 25 years in the state prison.

The bill would further provide that probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is punished under the above provision.

The bill would require the sentencing court, at the time of sentencing, and the Director of Corrections, or his or her designee, upon the admission of a defendant who has been convicted under the above provisions into the state prison, to inform the defendant of the penalties prescribed by those provisions.

(2) Existing law provides that where one of the new offenses is a specified violent felony, in addition and consecutive to any other prison terms therefor, the court shall impose a 3-year term for each prior separate prison term served by the defendant where the prior was a specified violent felony.

This bill would, instead, require the court to impose a

10-year term for each prior separate prison term served.

(3) Existing law provides that no additional term shall be imposed under the provision in (2) above for any prison term served prior to a 10-year period in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

This bill would delete that provision.

(4) Existing law specifies those offenses which are included within the definition of "violent felony."

This bill would delete and add various offenses to the list of offenses specified for purposes of defining "violent felony."

(5) Existing law specifies those offenses included within the definition of "serious felony" for purposes of the prohibition against plea bargaining.

This bill would add, among other offenses, assault upon a peace officer, firefighter, or custodial officer and felony domestic violence, as defined, when the traumatic condition is of a serious nature includes intentional infliction of serious bodily injury, as defined, to the list of offenses specified for purposes of defining "serious felony."

(6) Existing law provides that a judge or magistrate may, as specified, order an action dismissed.

Existing law also provides that the above provision does not authorize a judge to strike any prior conviction of a serious felony for purposes of sentence enhancement.

This bill would, in addition, provide that the above provision does not authorize a judge to strike any prior conviction of a violent felony for purposes of sentence enhancement.

(7) Existing law authorizes the Department of Corrections to reduce by $\frac{1}{3}$ for good behavior and participation, as specified, the prison term of any person sentenced to a determinate term of imprisonment.

This bill would, in addition, provide that notwithstanding the above provisions or other specified provisions of law authorizing a reduction in prison term for conduct credit, any person who is sentenced to serve a prison term for 1st or 2nd degree murder shall not receive the reduction in total imprisonment from the total term of imprisonment imposed by the sentencing court for those offenses or for any other

offense or sentence enhancement for that portion of the sentence that represents punishment for a violent felony as a principal or subordinate term, including any enhancement that attaches to, or is a part of, any violent felony and any enhancement for any prior conviction or prior prison term.

(8) Existing law provides, among other things, that any person sentenced to the state prison for 1st degree murder shall be eligible only for credit under the provisions in (7) above.

This bill would, instead, provide that any person sentenced to the state prison for 1st or 2nd degree murder shall not be eligible for credit.

The bill also would provide that any person who is sentenced to the state prison for at least one violent felony, as defined, shall not receive the reduction in total imprisonment under the provisions in (7) above or other specified provisions of law authorizing a reduction in prison term for conduct credit.

(9) The provisions of the law changed or added by this bill would be repealed on November 9, 1994, if a specified initiative measure is adopted by the voters at the November 8, 1994, general election.

(10) This bill would become operative on April 1, 1994, unless any one or more of several specified bills are enacted after this bill.

(11) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be
2 cited as the "Polly Klaas Memorial Habitual Offender
3 Reform Act."

4 SEC. 1.5. Section 667 of the Penal Code is amended
5 to read:

6 667. (a) (1) In compliance with subdivision (b) of
7 Section 1385, and except as provided in subdivisions (b)
8 and (c), any person convicted of a serious felony who

1 previously has been convicted of a serious felony in this
2 state or of any offense committed in another jurisdiction
3 which includes all of the elements of any serious felony
4 shall receive, in addition to the sentence imposed by the
5 court for the present offense, a five-year enhancement
6 for each such prior conviction on charges brought and
7 tried separately. The terms of the present offense and
8 each enhancement shall run consecutively.

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

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

17 (4) As used in this subdivision, "serious felony" means
18 a serious felony listed in subdivision (c) of Section 1192.7.

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

26 (b) (1) Except as provided in paragraph (3), any
27 person who is convicted of a serious felony and who has
28 two or more prior separate convictions for any violent or
29 serious felony shall be punished by imprisonment in the
30 state prison for life and shall not be eligible for release on
31 parole for 25 years. In no case shall a person who is
32 punished under this paragraph be released on parole
33 prior to serving at least 25 years in the state prison.

34 (2) Any person who is convicted of a violent felony
35 and who has two or more prior separate convictions for
36 any violent or serious felony shall be punished by
37 imprisonment in the state prison for life without the
38 possibility of parole.

39 (3) Any person who is convicted of a serious felony
40 and who has two or more prior separate convictions for

1 any violent felony shall be punished by imprisonment in
2 the state prison for life without the possibility of parole.

3 (4) As used in this subdivision, "serious felony" means
4 any felony specified in subdivision (c) of Section 1192.7,
5 except for any felony specified in paragraphs (18) and
6 (26) of subdivision (c) of Section 1192.7, and includes any
7 offense that is committed in another jurisdiction which
8 includes all of the elements of any "serious felony."

9 (5) As used in this subdivision, "violent felony" means
10 any violent felony specified in subdivision (c) of Section
11 667.5, and includes any offense that is committed in
12 another jurisdiction which includes all of the elements of
13 any "violent felony."

14 (6) As used in this subdivision, convictions for two
15 offenses are "separate convictions" when the date of
16 conviction for one offense occurs before the date of
17 commission of the other. Nothing in this paragraph is
18 intended to change the meaning of "brought and tried
19 separately" as used in paragraph (1) of subdivision (a).

20 (7) Probation shall not be granted to, nor shall the
21 execution or imposition of sentence be suspended for,
22 any person who is punished under this subdivision.

23 (c) (1) Any person who is convicted of any offense
24 specified in paragraph (2) and who has been previously
25 convicted of any of those offenses shall be punished by
26 imprisonment in the state prison for life and shall not be
27 eligible for release on parole for 25 years. In no case shall
28 any person who is punished under this paragraph be
29 released on parole prior to serving at least 25 years in the
30 state prison.

31 (2) This subdivision shall apply to any of the following
32 offenses if committed against a person who is under 14
33 years of age, or any offense committed in another
34 jurisdiction which includes all of the elements of any of
35 the following offenses if committed against a person who
36 is under 14 years of age:

37 (A) A violation of paragraph (2) of subdivision (a) of
38 Section 261.

39 (B) A violation of Section 264.1.

40 (C) A violation of subdivision (b) of Section 288.

1 (D) A violation of subdivision (a) of Section 289.

2 (E) Sodomy or oral copulation in violation of Section
3 286 or 288a by force, violence, duress, menace, or fear of
4 immediate and unlawful bodily injury on the victim or
5 another person.

6 (F) Kidnapping in violation of subdivision (b) of
7 Section 207 or subdivision (d) of Section 208.

8 (3) Probation shall not be granted to, nor shall the
9 execution or imposition of sentence be suspended for,
10 any person who is punished under this subdivision.

11 ~~(d) (1) At the time of sentencing, the sentencing~~
12 ~~court shall inform a defendant who is convicted under~~
13 ~~this section of the penalties prescribed herein.~~

14 ~~(2) Upon the admission of a defendant who has been~~
15 ~~convicted under this section into the state prison, the~~
16 ~~Director of Corrections, or his or her designee, shall~~
17 ~~inform the defendant of the penalties prescribed herein.~~

18 ~~(e)~~

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

25 SEC. 2. Section 667.5 of the Penal Code is amended to
26 read:

27 667.5. Enhancement of prison terms for new offenses
28 because of prior prison terms shall be imposed as follows:

29 (a) Where one of the new offenses is one of the violent
30 felonies specified in subdivision (c), in addition and
31 consecutive to any other prison terms therefor, the court
32 shall impose a 10-year term for each prior separate prison
33 term served by the defendant where the prior was one
34 of the violent felonies specified in subdivision (c).

35 (b) Except where subdivision (a) applies, where the
36 new offense is any felony for which a prison sentence is
37 imposed, in addition and consecutive to any other prison
38 terms therefor, the court shall impose a one-year term for
39 each prior separate prison term served for any felony;
40 provided that no additional term shall be imposed under

1 this subdivision for any prison term served prior to a
2 period of five years in which the defendant remained
3 free of both prison custody and the commission of an
4 offense which results in a felony conviction.

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

7 (1) Murder or voluntary manslaughter.

8 (2) Mayhem.

9 (3) Rape as defined in paragraph (2) of subdivision (a)
10 of Section 261.

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

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

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

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

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

29 (9) Robbery of the first degree, as defined in
30 subdivision (a) of Section 212.5.

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

33 (11) The offense defined in subdivision (a) of Section
34 289 or Section 289.5 where the act is accomplished against
35 the victim's will by force, violence, duress, menace, or
36 fear of immediate and unlawful bodily injury on the
37 victim or another person.

38 (12) Attempted murder.

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

40 (14) Kidnapping.

1 (15) Carjacking, as defined in subdivision (a) of
2 Section 215.

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

5 (17) Any felony in which it is charged and proved that
6 the defendant personally used a dangerous or deadly
7 weapon, as provided in subdivision (b) of Section 12022.

8 (18) A violation of Section 220.

9 (19) Assault upon a peace officer or firefighter in
10 violation of subdivision (c) or (d) of Section 245.

11 (20) Assault upon a custodial officer in violation of
12 Section 245.3.

13 (21) Bank robbery, as defined in subdivision (d) of
14 Section 1192.7.

15 (22) Robbery of the second degree, as defined in
16 subdivision (b) of Section 212.5, where it has been
17 charged and proved that the defendant was armed with
18 a firearm, as provided in subdivision (a) of Section 12022,
19 or the victim suffered serious bodily injury, as defined in
20 paragraph (5) of subdivision (f) of Section 243.

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

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

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

39 (f) A prior conviction of a felony shall include a
40 conviction in another jurisdiction for an offense which, if

1 committed in California, is punishable by imprisonment
 2 in the state prison if the defendant served one year or
 3 more in prison for the offense in the other jurisdiction. A
 4 prior conviction of a particular felony shall include a
 5 conviction in another jurisdiction for an offense which
 6 includes all of the elements of the particular felony as
 7 defined under California law if the defendant served one
 8 year or more in prison for the offense in the other
 9 jurisdiction.

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

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

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

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

36 (k) Notwithstanding subdivisions (d) and (g) or any
 37 other law, where one of the new offenses is committed
 38 while the defendant is temporarily removed from prison
 39 pursuant to Section 2690, transferred to a community
 40 facility pursuant to Section 3416, 6253, or 6263, or on

1 furlough pursuant to Section 6254, the defendant shall be
 2 subject to the full enhancements provided by this section.

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

6 SEC. 3. Section 1170.95 of the Penal Code is amended
 7 to read:

8 1170.95. (a) Notwithstanding Section 1170.1 relating
 9 to the maximum total of subordinate terms for
 10 consecutive offenses which are not "violent felonies," the
 11 total of the subordinate terms for consecutive offenses
 12 which are all residential burglaries may exceed five years
 13 but shall not exceed 10 years.

14 (b) Notwithstanding Section 1170.1, the term of
 15 imprisonment may exceed twice the number of years
 16 imposed by the trial court as the base term pursuant to
 17 subdivision (b) of Section 1170 if the defendant stands
 18 convicted of at least two residential burglaries.

19 (c) As used in this section, "residential burglary"
 20 means burglary of an inhabited dwelling house, an
 21 inhabited floating home as defined in subdivision (d) of
 22 Section 18075.55 of the Health and Safety Code, an
 23 inhabited trailer coach as defined in Section 635 of the
 24 Vehicle Code, or the inhabited portion of any other
 25 building.

26 (d) As used in this section, "residential arson" means
 27 arson committed in violation of subdivision (b) of Section
 28 451 where it is charged and proved that the defendant
 29 intentionally set fire to or burned or caused the burning
 30 of a distinct inhabited structure or a distinct inhabited
 31 property in the commission of that offense.

32 SEC. 4. Section 1192.7 of the Penal Code is amended
 33 to read:

34 1192.7. (a) Plea bargaining in any case in which the
 35 indictment or information charges any serious felony, any
 36 felony in which it is alleged that a firearm was personally
 37 used by the defendant, or any offense of driving while
 38 under the influence of alcohol, drugs, narcotics, or any
 39 other intoxicating substance, or any combination thereof,
 40 is prohibited, unless there is insufficient evidence to

1 prove the people's case, or testimony of a material
2 witness cannot be obtained, or a reduction or dismissal
3 would not result in a substantial change in sentence.

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

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

15 (1) Murder or voluntary manslaughter; (2) mayhem;
16 (3) rape; (4) sodomy by force, violence, duress, menace,
17 threat of great bodily injury, or fear of immediate and
18 unlawful bodily injury on the victim or another person;
19 (5) oral copulation by force, violence, duress, menace,
20 threat of great bodily injury, or fear of immediate and
21 unlawful bodily injury on the victim or another person;
22 (6) lewd or lascivious act on a child under the age of 14
23 years; (7) any felony punishable by death or
24 imprisonment in the state prison for life; (8) any other
25 felony in which the defendant personally inflicts great
26 bodily injury on any person, other than an accomplice, or
27 any felony in which the defendant personally uses a
28 firearm; (9) attempted murder; (10) assault with intent
29 to commit rape or robbery; (11) assault with a deadly
30 weapon or instrument on a peace officer; (12) assault by
31 a life prisoner on a noninmate; (13) assault with a deadly
32 weapon by an inmate; (14) arson; (15) exploding a
33 destructive device or any explosive with intent to injure;
34 (16) exploding a destructive device or any explosive
35 causing great bodily injury or mayhem; (17) exploding a
36 destructive device or any explosive with intent to
37 murder; (18) burglary of an inhabited dwelling house, or
38 trailer coach as defined by the Vehicle Code, or inhabited
39 portion of any other building; (19) robbery or bank
40 robbery; (20) kidnapping; (21) holding of a hostage by a

1 person confined in a state prison; (22) attempt to commit
2 a felony punishable by death or imprisonment in the state
3 prison for life; (23) any felony in which the defendant
4 personally used a dangerous or deadly weapon; (24)
5 selling, furnishing, administering, giving, or offering to
6 sell, furnish, administer, or give to a minor any heroin,
7 cocaine, phencyclidine (PCP), or any
8 methamphetamine-related drug, as described in
9 paragraph (2) of subdivision (d) of Section 11055 of the
10 Health and Safety Code, or any of the precursors of
11 methamphetamines, as described in subparagraph (A) of
12 paragraph (1) of subdivision (f) of Section 11055 or
13 subdivision (a) of Section 11100 of the Health and Safety
14 Code; (25) any violation of subdivision (a) of Section 289
15 or Section 289.5 where the act is accomplished against the
16 victim's will by force, violence, duress, menace, or fear of
17 immediate and unlawful bodily injury on the victim or
18 another person; (26) grand theft involving a firearm; (27)
19 carjacking; (28) any violation of Section 220; (29) assault
20 upon a peace officer or firefighter in violation of
21 subdivision (c) or (d) of Section 245; (30) assault upon a
22 custodial officer in violation of Section 245.3; (31)
23 continuous sexual abuse of a child in violation of Section
24 288.5; (32) intimidation of a witness or victim in violation
25 of paragraph (1) of subdivision (c) of Section 136.1; (33)
26 any attempt to commit a crime listed in this subdivision
27 other than an assault; (34) any conspiracy to commit an
28 offense described in paragraph (24) as it applies to
29 Section 11370.4 of the Health and Safety Code where the
30 defendant conspirator was substantially involved in the
31 planning, direction, or financing of the underlying
32 offense; and (35) a felony violation of Section 273.5 when
33 the traumatic condition ~~is of a serious nature~~ includes
34 *intentional infliction of serious bodily injury as defined in*
35 *paragraph (5) of subdivision (f) of Section 243.*

36 (d) As used in this section, "bank robbery" means to
37 take or attempt to take, by force or violence, or by
38 intimidation from the person or presence of another any
39 property or money or any other thing of value belonging
40 to, or in the care, custody, control, management, or

1 possession of, any bank, credit union, or any savings and
2 loan association.

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

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

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

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

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

25 SEC. 5. Section 1192.8 of the Penal Code is repealed.

26 SEC. 5.5. *Section 1192.8 is added to the Penal Code, to*
27 *read:*

28 1192.8. (a) *For purposes of subdivision (c) of Section*
29 *1192.7, "serious felony" also means any violation of*
30 *Section 288.5.*

31 (b) *This section shall become operative on November*
32 *9, 1994, if an initiative measure adding Section 1170.12 to*
33 *the Penal Code is approved by the voters at the*
34 *November 8, 1994, general election.*

35 SEC. 6. Section 1385 of the Penal Code is amended to
36 read:

37 1385. (a) The judge or magistrate may, either of his
38 or her own motion or upon the application of the
39 prosecuting attorney, and in furtherance of justice, order
40 action to be dismissed. The reasons for the dismissal

1 must be set forth in an order entered upon the minutes.
2 No dismissal shall be made for any cause which would be
3 ground of demurrer to the accusatory pleading.

4 (b) This section does not authorize a judge to strike
5 any prior conviction of a serious or violent felony for
6 purposes of enhancement of a sentence under Section
7 667.

8 SEC. 7. Section 2931 of the Penal Code is amended to
9 read:

10 2931. (a) If a prisoner was sentenced to the state
11 prison pursuant to Section 1170, or if he or she committed
12 a felony before July 1, 1977, and would have been
13 sentenced under Section 1170 if the felony had been
14 committed after July 1, 1977, the Department of
15 Corrections may reduce the term prescribed under that
16 section by one-third for good behavior and participation
17 consistent with subdivision (d) of Section 1170.2. A
18 document shall be signed by a prison official and given to
19 the prisoner, at the time of compliance with Section 2930,
20 outlining the conditions which the prisoner shall meet to
21 receive the credit. The conditions specified in the
22 document may be modified upon any of the following:

23 (1) Mutual consent of the prisoner and the
24 Department of Corrections.

25 (2) The transfer of the prisoner from one institution to
26 another.

27 (3) The department's determination of the prisoner's
28 lack of adaptability or success in a specific program or
29 assignment. In that case the prisoner shall be entitled to
30 a hearing regarding the department's decision.

31 (4) A change in custodial status.

32 (b) Total possible good behavior and participation
33 credit shall result in a four-month reduction for each
34 eight months served in prison or in a reduction based on
35 this ratio for any lesser period of time. Three months of
36 this four-month reduction, or a reduction based on this
37 ratio for any lesser period, shall be based upon
38 forbearance from any act for which the prisoner could be
39 prosecuted in a court of law, either as a misdemeanor or
40 a felony, or any act of misconduct described as a serious

1 disciplinary infraction by the Department of Corrections.
2 (c) One month of this four-month reduction, or a
3 reduction based on this ratio for a lesser period, shall be
4 based solely upon participation in work, educational,
5 vocational, therapeutic, or other prison activities. Failure
6 to succeed after demonstrating a reasonable effort in the
7 specified activity shall not result in loss of participation
8 credit. Failure to participate in the specified activities
9 can result in a maximum loss of credit of 30 days for each
10 failure to participate. However, those confined for other
11 than behavior problems shall be given specified activities
12 commensurate with the custodial status.

13 (d) Notwithstanding this section, Section 4019, or any
14 other law authorizing a reduction in prison term for
15 conduct credit, any person who is sentenced to serve a
16 term of imprisonment in the state prison under
17 subdivision (a) or (c) of Section 190 shall not receive the
18 reduction in total imprisonment from the total term of
19 imprisonment imposed by the sentencing court under
20 subdivision (a) or (c) of Section 190 or for any other
21 offense or sentence enhancement.

22 (e) This section shall not apply to any person whose
23 crime was committed on or after January 1, 1983.

24 SEC. 8. Section 2933 of the Penal Code is amended to
25 read:

26 2933. (a) It is the intent of the Legislature that any
27 person who is convicted of a crime and sentenced to the
28 state prison under Section 1170 serve the entire sentence
29 imposed by the court, except for a reduction in the time
30 served in the custody of the Director of Corrections for
31 performance in work, training, or education programs
32 established by the Director of Corrections. Worktime
33 credits shall apply for performance in work assignments
34 and performance in elementary, high school, or
35 vocational education programs. Enrollment in a two- or
36 four-year college program leading to a degree shall result
37 in the application of time credits equal to that provided
38 in Section 2931. For every six months of full-time
39 performance in a credit qualifying program, as
40 designated by the director, a prisoner shall be awarded

1 worktime credit reductions from his or her term of
2 confinement of six months. A lesser amount of credit
3 based on this ratio shall be awarded for any lesser period
4 of continuous performance. Less than maximum credit
5 should be awarded pursuant to regulations adopted by
6 the director for any prisoner who is not assigned to a
7 full-time credit qualifying program. Every prisoner who
8 refuses to accept a full-time credit qualifying assignment
9 or who is denied the opportunity to earn worktime
10 credits pursuant to subdivision (a) of Section 2932 shall be
11 awarded no worktime credit reduction. Every prisoner
12 who voluntarily accepts a half-time credit qualifying
13 assignment in lieu of a full-time assignment shall be
14 awarded worktime credit reductions from his or her term
15 of confinement of three months for each six-month
16 period of continued performance. Except as provided in
17 subdivision (a) of Section 2932, every prisoner who is
18 willing to participate in a full-time credit qualifying
19 assignment but who is either not assigned to a full-time
20 assignment or is assigned to a program for less than full
21 time, shall receive no less credit than is provided under
22 Section 2931. Under no circumstances shall any prisoner
23 receive more than six months' credit reduction for any
24 six-month period under this section.

25 (b) Worktime credit is a privilege, not a right.
26 Worktime credit must be earned and may be forfeited
27 pursuant to Section 2932. Except as provided in
28 subdivision (a) of Section 2932, every prisoner shall have
29 a reasonable opportunity to participate in a full-time
30 credit qualifying assignment in a manner consistent with
31 institutional security and available resources.

32 (c) Under regulations adopted by the Department of
33 Corrections, which shall require a period of not more
34 than one year free of disciplinary infractions, worktime
35 credit which has been previously forfeited may be
36 restored by the director. The regulations shall provide for
37 separate classifications of serious disciplinary infractions
38 as they relate to restoration of credits; the time period
39 required before forfeited credits or a portion thereof may
be restored; and the percentage of forfeited credits that

1 may be restored for such time periods. For credits
 2 forfeited for commission of a felony specified in
 3 paragraph (1) of subdivision (a) of Section 2932, the
 4 Department of Corrections may provide that up to 180
 5 days of lost credit shall not be restored and up to 90 days
 6 of credit shall not be restored for a forfeiture resulting
 7 from conspiracy or attempts to commit one of those acts;
 8 provided that no credits may be restored if they were
 9 forfeited for a serious disciplinary infraction in which the
 10 victim died or was permanently disabled. Upon
 11 application of the prisoner and following completion of
 12 the required time period free of disciplinary offenses,
 13 forfeited credits eligible for restoration under the
 14 regulations shall be restored unless, at a hearing, it is
 15 found that the prisoner refused to accept or failed to
 16 perform in a credit qualifying assignment or
 17 extraordinary circumstances are present that require
 18 that credits not be restored. "Extraordinary
 19 circumstances" shall be defined in the regulations
 20 adopted by the director.

21 The prisoner may appeal the finding through the
 22 Department of Corrections review procedure, which
 23 shall include a review by an individual independent of
 24 the institution who has supervisory authority over the
 25 institution.

26 (d) Subdivision (c) shall also apply in cases of credit
 27 forfeited under Section 2931 for offenses and serious
 28 disciplinary infractions occurring on or after January 1,
 29 1983.

30 (e) Any person who is sentenced to a term in the state
 31 prison under subdivision (a) or (c) of Section 190 shall
 32 not be eligible for credit.

33 (f) Any person who is sentenced to a term of
 34 imprisonment in the state prison for at least one violent
 35 felony, as defined in subdivision (c) of Section 667.5, shall
 36 not receive the reduction in total imprisonment pursuant
 37 to this section, Section 2931, 4019, or any other law
 38 authorizing a reduction in prison term for conduct credit
 39 for that portion of the sentence that represents
 40 punishment for a violent felony as a principal or

1 subordinate term, including any enhancement that
 2 attaches to, or is a part of, any violent felony and any
 3 enhancement for any prior conviction or prior prison
 4 term.

5 SEC. 9. The provisions of this act shall become
 6 operative on April 1, 1994, unless either Assembly Bill 167,
 7 Assembly Bill 971, or Assembly Bill 2429 of the 1993-94
 8 Regular Session, or Assembly Bill 9 of the 1993-94 First
 9 Extraordinary Session, or any combination thereof, are
 10 enacted after this act, in which case this act shall not
 11 become operative.

12 SEC. 10. Sections 667, 667.5, 1170.95, 1192.7, 1385, 2931,
 13 and 2933 of the Penal Code shall remain in effect until
 14 November 9, 1994, and on that date are repealed if an
 15 initiative measure adding Section 1170.12 to the Penal
 16 Code is approved by the voters at the November 8, 1994,
 17 general election, at which time those sections shall have
 18 the same force and effect as if they had not been
 19 amended by this act.

20 SEC. 11. This act is an urgency statute necessary for
 21 the immediate preservation of the public peace, health,
 22 or safety within the meaning of Article IV of the
 23 Constitution and shall go into immediate effect. The facts
 24 constituting the necessity are:

25 In order to ensure longer prison sentences and greater
 26 punishment for those persons who commit serious or
 27 violent felonies and have been previously convicted of
 28 serious or violent felonies, and to protect the public from
 29 the imminent threat posed by those repeat offenders, it
 30 is necessary that this act take effect immediately.

Second Regular Session 108th General Assembly (1994)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word NEW will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1993 General Assembly.

HOUSE ENROLLED ACT No. 1063

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-34-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 2. (a) The indictment or information shall be in writing and allege the commission of an offense by:

- (1) stating the title of the action and the name of the court in which the indictment or information is filed;
- (2) stating the name of the offense in the words of the statute or any other words conveying the same meaning;
- (3) citing the statutory provision alleged to have been violated, except that any failure to include such a citation or any error in such a citation does not constitute grounds for reversal of a conviction where the defendant was not otherwise misled as to the nature of the charges against him;
- (4) setting forth the nature and elements of the offense charged in plain and concise language without unnecessary repetition;
- (5) stating the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense;
- (6) stating the time of the offense as definitely as can be done

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if time is of the essence of the offense;

(7) stating the place of the offense with sufficient particularity to show that the offense was committed within the jurisdiction of the court where the charge is to be filed;

(8) stating the place of the offense as definitely as can be done if the place is of the essence of the offense; and

(9) stating the name of every defendant, if known, and if not known, by designating the defendant by any name or description by which he can be identified with reasonable certainty.

(b) An indictment shall be signed by:

(1) the foreman or five (5) members of the grand jury; and

(2) the prosecuting attorney or his deputy.

An information shall be signed by the prosecuting attorney or his deputy and sworn to or affirmed by him or any other person.

(c) An indictment or information shall have stated upon it the names of all the material witnesses. Other witnesses may afterwards be subpoenaed by the state, but unless the name of a witness is stated on the indictment or information, no continuance shall be granted to the state due to the absence of the witness.

(d) The indictment or information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It need not contain a formal commencement, a formal conclusion, or any other matter not necessary to the statement. Presumptions of law and matters of which judicial notice is taken need not be stated.

(e) The indictment may be substantially in the following form:

IN THE _____ COURT OF INDIANA, 19____

STATE OF INDIANA

vs.

CAUSE NUMBER _____

A _____ B _____

The grand jury of the county of _____ upon their oath or affirmation do present that AB, on the _____ day of _____ 19____ at the county of _____ in the state of Indiana (HERE SET FORTH THE OFFENSE CHARGED).

(f) The information may be substantially in the same form as the indictment, substituting for the words, "the grand jury of the county of _____, upon their oath or affirmation so present" the following: "CD, being duly sworn on his oath or having affirmed, says." It is not necessary in an information to state the reason why the proceeding is by information rather than indictment.

(g) This section applies to a traffic offense (as defined in



IC 9-30-3-5) if the traffic offense is:

- (1) a felony; or**
- (2) a misdemeanor.**

SECTION 2. IC 35-36-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 5. (a) Except as provided by subsection (d), whenever a defendant is found guilty but mentally ill at the time of the crime or enters a plea to that effect that is accepted by the court, the court shall sentence the defendant in the same manner as a defendant found guilty of the offense.

(b) If a defendant who is found guilty but mentally ill at the time of the crime is committed to the department of correction, the defendant shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant's mental illness. Treatment may be provided by:

- (1) the department of correction; or**
- (2) the division of mental health after transfer under IC 11-10-4.**

(c) If a defendant who is found guilty but mentally ill at the time of the crime is placed on probation, the court may, in accordance with IC 35-38-2-2.3, require that the defendant undergo treatment.

(d) As used in this subsection, "mentally retarded individual" has the meaning set forth in IC 35-36-9-2. If a court determines under IC 35-36-9 that a defendant who is charged with a murder for which the state seeks a death sentence is a mentally retarded individual, the court shall sentence the defendant under IC 35-50-2-3(a).

SECTION 3. IC 35-36-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]:

Chapter 9. Pretrial Determination of Mental Retardation in Death Sentence Cases

Sec. 1. This section applies when a defendant is charged with a murder for which the state seeks a death sentence under IC 35-50-2-9.

Sec. 2. As used in this chapter, "mentally retarded individual" means an individual who, before becoming twenty-two (22) years of age, manifests:

- (1) significantly subaverage intellectual functioning; and**
 - (2) substantial impairment of adaptive behavior;**
- that is documented in a court ordered evaluative report.**

Sec. 3. (a) The defendant may file a petition alleging that the defendant is a mentally retarded individual.



(b) The petition must be filed not later than twenty (20) days before the omnibus date.

(c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

- (1) Whether the defendant has a significantly subaverage level of intellectual functioning.
- (2) Whether the defendant's adaptive behavior is substantially impaired.
- (3) Whether the conditions described in subdivisions (1) and (2) existed before the defendant became twenty-two (22) years of age.

Sec. 4. (a) The court shall conduct a hearing on the petition under this chapter.

(b) At the hearing, the defendant must prove by clear and convincing evidence that the defendant is a mentally retarded individual.

Sec. 5. Not later than ten (10) days before the initial trial date, the court shall determine whether the defendant is a mentally retarded individual based on the evidence set forth at the hearing under section 4 of this chapter. The court shall articulate findings supporting the court's determination under this section.

Sec. 6. If the court determines that the defendant is a mentally retarded individual under section 5 of this chapter, the part of the state's charging instrument filed under IC 35-50-2-9(a) that seeks a death sentence against the defendant shall be dismissed.

Sec. 7. If a defendant who is determined to be a mentally retarded individual under this chapter is convicted of murder, the court shall sentence the defendant under IC 35-50-2-3(a).

SECTION 4. IC 35-50-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 1.5. As used in this chapter, "mentally retarded individual" has the meaning set forth in IC 35-36-9-2.

SECTION 5. IC 35-50-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 3. (a) A person who commits murder shall be imprisoned for a fixed term of forty (40) years, with not more than twenty (20) years added for aggravating circumstances or not more than ten (10) years subtracted for mitigating circumstances; in addition, the person may be fined not



more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), a person who was at least sixteen (16) years of age at the time the murder was committed may be sentenced to:

- (1) death; or
- (2) life imprisonment without parole;

under section 9 of this chapter **unless a court determines under IC 35-36-9 that the person is a mentally retarded individual.**

SECTION 6. IC 35-50-2-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 8.5. (a) The state may seek to have a person sentenced to life imprisonment without parole for any felony described in section 2(b)(4) of this chapter by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions described in section 2(b)(4) of this chapter.

(b) If the person was convicted of the felony in a jury trial, the jury shall reconvene to hear evidence on the life imprisonment without parole allegation. If the person was convicted of the felony by trial to the court without a jury or if the judgment was entered to guilty plea, the court alone shall hear evidence on the life imprisonment without parole allegation.

(c) A person is subject to life imprisonment without parole if the jury (in a case tried by a jury) or the court (in a case tried by the court or on a judgment entered on a guilty plea) finds that the state has proved beyond a reasonable doubt that the person has accumulated two (2) prior unrelated convictions for offenses described in section 2(b)(4) of this chapter.

(d) The court may sentence a person found to be subject to life imprisonment without parole under this section to life imprisonment without parole.

SECTION 7. IC 35-50-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the



defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

- (A) Arson (IC 35-43-1-1).
- (B) Burglary (IC 35-43-2-1).
- (C) Child molesting (IC 35-42-4-3).
- (D) Criminal deviate conduct (IC 35-42-4-2).
- (E) Kidnapping (IC 35-42-3-2).
- (F) Rape (IC 35-42-4-1).
- (G) Robbery (IC 35-42-5-1).
- (H) Carjacking (IC 35-42-5-2).
- (I) Criminal gang activity (IC 35-45-9-3).**
- (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).**

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

- (A) the victim was acting in the course of duty; or
- (B) the murder was motivated by an act the victim performed while acting in the course of duty.

(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

- (A) under the custody of the department of correction;
- (B) under the custody of a county sheriff;
- (C) on probation after receiving a sentence for the commission of a felony; or
- (D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.



(11) The victim of the murder was less than twelve (12) years of age.

(12) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(13) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(14) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in, or consented to, the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the



proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) **Except as provided by IC 35-36-9**, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

- (1) the death penalty; or
- (2) life imprisonment without parole;

only if it makes the findings described in subsection (i). **The court shall make the final determination of the sentence, after considering the jury's recommendation, and the sentence shall be based on the same standards that the jury was required to consider.** The court is not bound by the jury's recommendation.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, **except as provided by IC 35-36-9**, the court shall:

- (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (i).

(h) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The death sentence may not be executed until the supreme court has completed its review.

(i) ~~To impose~~ **Before a sentence may be imposed** under this section, ~~a the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g),~~ must find that:

- (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and
- (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

SECTION 8. [EFFECTIVE JULY 1, 1994] (a) IC 35-36-9, as added by this act, applies to a murder committed:



- (1) after June 30, 1994; or
 - (2) before July 1, 1994, if a person awaits trial for the murder after June 30, 1994.
- (b) This SECTION expires July 2, 1994.



President of Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

Second Regular Session 108th General Assembly (1994)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in *this style type*, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in *this style type*. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1993 General Assembly.

SENATE ENROLLED ACT No. 410

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-6-2-1.1, AS AMENDED BY HEA 1038-1994, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 1.1. (a) A juvenile court has exclusive original jurisdiction, except as provided in section 1.5 of this chapter, in the following:

- (1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child (IC 31-6-4).
- (2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services (IC 31-6-4).
- (3) Proceedings concerning the paternity of a child (IC 31-6-6.1).
- (4) Proceedings under the interstate compact on juveniles (IC 31-6-10).
- (5) Proceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child (IC 31-6-4-17).

SEA 410—Concur



(6) Proceedings governing the detention of a child before a petition has been filed (IC 31-6-4-5 and IC 31-6-4-6).

(7) Proceedings to issue a protective order (IC 31-6-7-14).

(8) Other proceedings specified by law.

(b) Except as provided in IC 33-5-29.5-4 and IC 33-5-35.1-4, this article does not apply to a child who allegedly committed a violation of:

(1) a traffic law, if the violation is a misdemeanor;

(2) any statute defining an infraction, except as provided under IC 7.1-5-7; or

(3) any ordinance.

(c) A juvenile court has concurrent original jurisdiction in cases involving adults charged with the crime of:

(1) neglect of a dependent (IC 35-46-1-4);

(2) contributing to delinquency (IC 35-46-1-8);

(3) violating the compulsory school attendance law (IC 20-8.1-3);

(4) criminal confinement of a child (IC 35-42-3-3); or

(5) interference with custody (IC 35-42-3-4).

(d) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

(1) IC 35-42-1-1 (murder);

(2) IC 35-42-3-2 (kidnapping);

(3) IC 35-42-4-1 (rape);

(4) IC 35-42-5-1 (robbery), if:

(A) it was committed while armed with a deadly weapon;

or

(B) it results in bodily injury or serious bodily injury;

(5) IC 35-42-5-2 (carjacking);

(6) IC 35-45-9-3 (criminal gang activity);

(7) IC 35-45-9-4 (criminal gang intimidation);

(8) IC 35-47-2-1 (carrying a handgun without a license);

(9) IC 35-47-10 (children and handguns);

~~(6)~~ (10) IC 35-47-5-4.1 (dealing in a sawed-off shotgun);

~~(7)~~ (11) an act that would be a misdemeanor or a felony if committed by an adult if:

(A) the individual has previously been waived to a court that had adult misdemeanor or felony jurisdiction under section 4 of this chapter;

(B) the individual pleaded guilty or was convicted of the offense that resulted in the waiver, or of a lesser included offense; and



(C) the second offense occurred within one (1) year of the date the waiver order was entered; or

~~(8)~~ (12) any offense that may be joined (under IC 35-34-1-9(a)(2)) with any crime listed in subdivisions (1) through (5);

if the individual was sixteen (16) years of age or older at the time of the alleged violation. Once such an individual has been charged with any crime listed in subdivisions (1) through ~~(8)~~, (12), the court having adult criminal jurisdiction shall retain jurisdiction over the case, even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to or a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.

(e) A juvenile court has concurrent original jurisdiction with the probate court in the following:

(1) Proceedings to terminate the parent-child relationship (IC 31-6-5).

(2) Proceedings to commit children under IC 12-26.

However, the juvenile court's jurisdiction is limited as described in IC 12-26-1-4.

(f) Nothing in this chapter prohibits a probate court from exercising its jurisdiction over guardianship of a person who is less than eighteen (18) years of age. However, if allegations in the petition for guardianship or allegations produced at guardianship proceedings indicate that the person for whom the guardianship is requested meets the definition of a child in need of services under IC 31-6-4-3, the probate court on its own motion or at the request of a party shall:

(1) send the petition for guardianship or the record of guardianship proceedings, or both, to the prosecuting attorney or the attorney for the county office of family and children; and

(2) direct the prosecuting attorney or the attorney for the county office of family and children to initiate an investigation and proceedings in the juvenile court to determine whether the person for whom the guardianship is requested is a child in need of services.

The probate court retains jurisdiction over the matter until the juvenile court authorizes the filing of a petition under IC 31-6-4-10.

SECTION 2. IC 31-6-4-6.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 6.1. (a) This section applies whenever a child alleged to be a child in need of services is taken



into custody under section 6 of this chapter.

(b) The county office of family and children shall submit written information to a child's parent, custodian, or guardian at the time the child is taken into custody regarding the following legal rights of the parent, custodian, or guardian:

(1) The right to:

- (A) be represented by an attorney;
- (B) cross examine witnesses; and
- (C) present evidence on the parent's, custodian's, or guardian's own behalf;

at each court proceeding on a petition alleging that the child is a child in need of services.

(2) The right not to make statements that incriminate the parent, custodian, or guardian and that any incriminating statement may be used during a court proceeding on a petition alleging that the child is a child in need of services.

SECTION 3. IC 35-33-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a battery resulting in bodily injury under IC 35-42-2-1. The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;
- (6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy); or
- (7) probable cause to believe that the person has committed stalking (IC 35-45-10); or
- (8) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license).

(b) A person who:

- (1) is employed full time as a federal enforcement officer;



(2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and

(3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

SECTION 4. IC 35-41-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 8. "Deadly weapon" means the following:

(1) A loaded or unloaded firearm. ~~or~~

(2) A weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.

(3) **An animal (as defined in IC 35-46-3-3) that is:**

(A) readily capable of causing serious bodily injury; and

(B) used in the commission or attempted commission of a crime.

SECTION 5. IC 35-45-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 1. As used in this chapter, "criminal gang" means a group with at least five (5) members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; ~~and or~~

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

SECTION 6. IC 35-47-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 3. (a) A person desiring a license to carry a handgun shall apply:

(1) to the chief of police or corresponding law enforcement officer of the municipality in which he resides;

(2) if that municipality has no such officer, or if the applicant does not reside in a municipality, to the sheriff of the county in which he resides after he has obtained an application form prescribed by the superintendent; or

(3) if he is a resident of another state and has a regular place



of business or employment in Indiana, to the sheriff of the county in which he has a regular place of business or employment.

(b) The law enforcement agency which accepts an application for a handgun license shall collect a ten dollar (\$10) application fee, five dollars (\$5) of which shall be refunded if the license is not issued. Except as provided in subsection (g), the fee shall be:

- (1) deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund; and
- (2) used by the agency for the purpose of:
 - (A) training law enforcement officers in the proper use of firearms or other law enforcement duties; or
 - (B) to purchase for the law enforcement officers employed by the law enforcement agency firearms, or firearm related equipment, or both.

The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection.

(c) The officer to whom the application is made shall ascertain concerning the applicant his name, full address, length of residence in the community, whether his residence is located within the limits of any city or town, occupation, place of business or employment, criminal record, if any, and convictions (minor traffic offenses excepted), age, race, sex, nationality, date of birth, citizenship, height, weight, build, color of hair, color of eyes, scars and marks, whether the applicant has previously held an Indiana license to carry a handgun and, if so, the serial number of the license and year issued, whether his license has ever been suspended or revoked, and if so, the year and reason for the suspension or revocation, and the applicant's reason for desiring a license. The officer to whom the application is made shall conduct an investigation into the applicant's official records and verify thereby the applicant's character and reputation, and shall in addition verify for accuracy the information contained in the application, and shall forward this information together with his recommendation for approval or disapproval and one (1) set of legible and classifiable fingerprints of the applicant to the superintendent.

(d) The superintendent may make whatever further investigation he deems necessary. Whenever disapproval is recommended, the officer to whom the application is made shall provide the superintendent and the applicant with his complete and specific reasons, in writing, for the recommendation of disapproval.

(e) If it appears to the superintendent that the applicant has a



proper reason for carrying a handgun and is of good character and reputation and a proper person to be so licensed, he shall issue to the applicant a qualified or an unlimited license to carry any handgun lawfully possessed by the applicant. The original license shall be delivered to the licensee. A copy shall be delivered to the officer to whom the application for license was made. A copy shall be retained by the superintendent for at least four (4) years. This license shall be valid for a period of four (4) years from the date of issue. The license of police officers, sheriffs or their deputies, and law enforcement officers of the United States government who have been honorably retired by a lawfully created pension board or its equivalent after twenty (20) or more years of service, shall be valid for the life of such individuals. However, such lifetime licenses are automatically revoked if the license holder does not remain a proper person.

(f) A license to carry a handgun shall not be issued to any person who:

- (1) has been convicted of a felony; or
- (2) who is under eighteen (18) years of age; or
- (3) has been arrested for a Class A or Class B felony, or any other felony that was committed while armed with a deadly weapon or that involved the use of violence, if a court has found probable cause to believe that the person committed the offense charged.

In the case of an arrest under subdivision (3), a license to carry a handgun may be issued to a person who has been acquitted of the specific offense charged or if the charges for the specific offense are dismissed. The superintendent shall prescribe all forms to be used in connection with the administration of this chapter.

(g) If the law enforcement agency that charges a fee under subsection (b) is a city or town law enforcement agency, the fee shall be deposited in the law enforcement continuing education fund established under IC 5-2-8-2.

SECTION 7. IC 35-47-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 5. (a) The superintendent may suspend or revoke any license issued under this chapter if he has reasonable grounds to believe that the person's license should be suspended or revoked.

(b) Documented evidence that a person is not a "proper person" to be licensed as defined by IC 35-47-1-7, or is prohibited under section 3(f)(3) of this chapter from being issued a license, shall be grounds for immediate suspension or



revocation of a license previously issued under this chapter. However, if a license is suspended or revoked based solely on an arrest under section 3(f)(3) of this chapter, the license shall be reinstated upon the acquittal of the defendant in that case or upon the dismissal of the charges for the specific offense.

~~(b)~~ (c) ~~Failure of a~~ A person who fails to promptly return his license after written notice of suspension or revocation is ~~unlawful~~ commits a Class A misdemeanor. The observation of a handgun license in the possession of a person whose license has been suspended or revoked constitutes a sufficient basis for the arrest of that person for violation of this subsection.

~~(e)~~ (d) The superintendent shall establish rules under IC 4-22-2 concerning the procedure for suspending or revoking a person's license.

SECTION 8. IC 35-47-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 7. (a) ~~No person;~~ Except an individual acting within a parent-minor child or guardian-minor protected person relationship ~~shall~~ or any other individual who is also acting in compliance with IC 35-47-10, a person may not sell, give, or in any other manner transfer the ownership or possession of a handgun or assault weapon (as defined in IC 35-50-2-11) to any person under the age of eighteen (18) years of age.

(b) It is unlawful for a person to sell, give, or in any manner transfer the ownership or possession of a handgun to ~~one~~ another person who the person has reasonable cause to believe:

- (1) has been convicted of a felony;
- (2) is a drug abuser;
- (3) is an alcohol abuser; or
- (4) is mentally incompetent.

SECTION 9. IC 35-47-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 23. (a) A person who violates section 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, or 16 of this chapter commits a Class B misdemeanor.

(b) A person who violates section 7, 17, or 18 of this chapter commits a Class C felony.

(c) A person who violates section 1 ~~or section 22~~ of this chapter commits a Class A misdemeanor. However, the offense is a Class C felony:

- (1) if the offense is committed:
 - (A) on or in school property;
 - (B) within one thousand (1,000) feet of school



property; or

(C) on a school bus; or

(2) if the person:

(A) has a prior conviction of any offense under:

(i) this subsection; or

(ii) subsection (d); or

(B) has been convicted of a felony within fifteen (15) years before the date of the offense.

(d) A person who violates section 22 of this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction of any offense under this subsection or subsection (c), or if the person has been convicted of a felony within fifteen (15) years before the date of the offense.

SECTION 10. IC 35-47-4-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 4. (a) This section does not apply to a person who owns, carries, or possesses a firearm:

(1) in the person's dwelling;

(2) on the person's property; or

(3) in the person's fixed place of business.

(b) A person who:

(1) has been convicted of a felony; and

(2) owns, carries, or possesses a firearm not designed to use fixed cartridges or fixed ammunition, or a firearm made before January 1, 1899;

commits a Class D felony.

SECTION 11. IC 35-47-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]:

Chapter 9. Possession of Firearms on School Property and School Buses

Sec. 1. This chapter does not apply to the following:

(1) A:

(A) federal;

(B) state; or

(C) local;

law enforcement officer.

(2) A person who has been employed or authorized by:

(A) a school; or

(B) another person who owns or operates property being used by a school for a school function;

to act as a security guard, perform or participate in a



school function, or participate in any other activity authorized by a school.

(3) A person who:

- (A) may legally possess a firearm; and
- (B) possesses the firearm in a motor vehicle that is being operated by the person to transport another person to or from a school or a school function.

Sec. 2. A person who possesses a firearm:

- (1) in or on school property;
- (2) in or on property that is being used by a school for a school function; or
- (3) on a school bus;

commits a Class D felony.

SECTION 12. IC 35-47-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 10. Children and Handguns

Sec. 1. This chapter does not apply to the following:

- (1) A child who is attending a hunters safety course or a firearms safety course or an adult who is supervising the child during the course.
- (2) A child engaging in practice in using a handgun for target shooting at an established range or in an area where the discharge of a firearm is not prohibited or supervised by:
 - (A) a qualified firearms instructor; or
 - (B) an adult who is supervising the child while the child is at the range.
- (3) A child engaging in an organized competition involving the use of a handgun or participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses handguns as a part of a performance or an adult who is involved in the competition or performance.
- (4) A child who is hunting or trapping under a valid license issued to the child under IC 14-2-7.
- (5) A child who is traveling with an unloaded handgun to or from an activity described in this section.
- (6) A child who:
 - (A) is on real property that is under the control of the child's parent, an adult family member of the child, or the child's legal guardian; and



(B) has permission from the child's parent or legal guardian to possess a handgun.

(7) A child who:

(A) is at the child's residence; and

(B) has the permission of the child's parent, an adult family member of the child, or the child's legal guardian to possess a handgun.

Sec. 2. As used in this chapter, "adult" means a person who is at least eighteen (18) years of age.

Sec. 3. As used in this chapter, "child" means a person who is less than eighteen (18) years of age.

Sec. 4. As used in this chapter, "loaded" means having any of the following:

(1) A cartridge in the chamber of a handgun.

(2) A cartridge in the cylinder of a handgun if the handgun is a revolver.

(3) Ammunition in close proximity to a handgun so that a person can readily place the ammunition in the handgun.

Sec. 5. A child who knowingly, intentionally, or recklessly:

(1) possesses a handgun for any purpose other than a purpose described in section 1 of this chapter; or

(2) provides a handgun to another child with or without remuneration;

commits dangerous possession of a handgun, a Class A misdemeanor. However, the offense is a Class C felony if the child has a prior conviction under this section.

Sec. 6. An adult who knowingly, intentionally, or recklessly provides a handgun to a child for any purpose other than those described in section 1 of this chapter, with or without remuneration, commits dangerous control of a handgun, a Class C felony. However, the offense is a Class B felony if the adult has a prior conviction under this section.

Sec. 7. A child's parent or legal guardian who knowingly, intentionally, or recklessly permits the child to possess a handgun:

(1) while:

(A) aware of a substantial risk that the child will use the handgun to commit a felony; and

(B) failing to make reasonable efforts to prevent the use of a handgun by the child to commit a felony; or

(2) when the child has been convicted of a crime of violence or has been adjudicated as a juvenile for an offense that



would constitute a crime of violence if the child were an adult;
 commits dangerous control of a child, a Class C felony. However, the offense is a Class B felony if the child's parent or legal guardian has a prior conviction under this section.

Sec. 8. (a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall order the following:

(1) That a person who has committed an offense be incarcerated for five (5) consecutive days in an appropriate facility.

(2) That the additional five (5) day term must be served within two (2) weeks after the date of sentencing.

(b) Notwithstanding IC 35-50-6, a person does not earn credit time while serving an additional five (5) day term of imprisonment imposed by a court under this section.

Sec. 9. A court shall impose consecutive sentences upon a person who has a conviction under this chapter and a conviction under IC 35-47-2-7.

Sec. 10. When sentencing a child who has committed an offense under this chapter, a court may elect to place the child in a facility that uses a quasi-military program for rehabilitative purposes.

SECTION 13. IC 35-47-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]:

Chapter 11. Local Regulation of Firearms

Sec. 1. (a) Section 2 of this chapter applies to all units (as defined in IC 36-1-2-23). All other sections of this chapter apply to all units other than townships.

(b) This chapter applies only if a statute expressly grants a legislative body the authority to adopt an emergency ordinance under this chapter.

(c) This chapter does not affect the validity of an ordinance adopted before, and in effect on, January 1, 1994.

Sec. 2. Notwithstanding IC 36-1-3, a unit may not regulate in any manner the ownership, possession, sale, transfer, or transportation of firearms (as defined in IC 35-47-1-5) or ammunition except as follows:

(1) This chapter does not apply to land, buildings, or other real property owned or administered by a unit, except highways (as defined in IC 8-23-1-23) or public highways (as defined in IC 8-2.1-17-14).



(2) Notwithstanding the limitation in this section, a unit may use the unit's planning and zoning powers under IC 36-7-4 to prohibit the sale of firearms within two hundred (200) feet of a school by a person having a business that did not sell firearms within two hundred (200) feet of a school before April 1, 1994.

(3) Notwithstanding the limitation in this section, a legislative body of a unit other than a township may adopt an emergency ordinance or a unit other than a township may take other action allowed under section 6 of this chapter to regulate the sale of firearms anywhere within the unit for a period of not more than seventy-two (72) hours after the regulatory action takes effect.

Sec. 3. The legislative body of a unit may adopt an emergency ordinance under this chapter if:

- (1) a disaster (as defined in IC 10-4-1-3) has occurred or is likely to occur in the unit; and
- (2) a local disaster emergency has been declared in the unit under IC 10-4-1-23.

Sec. 4. Notwithstanding any other law, if the conditions described under section 3 of this chapter are present within a unit, the legislative body of the unit may adopt an emergency ordinance under this chapter:

- (1) without complying with the public notice and public meeting provisions of:
 - (A) IC 5-14-1.5; or
 - (B) any other statute;
- (2) on the same day that the ordinance is presented to the legislative body; and
- (3) by a majority vote of the members of the legislative body.

Sec. 5. An emergency ordinance adopted under section 4 of this chapter:

- (1) takes effect on the date and at the time of the adoption of the ordinance; and
- (2) expires the earlier of:
 - (A) seventy-two (72) hours after the time of the adoption of the ordinance; or
 - (B) a time specified in the emergency ordinance.

Sec. 6. If:

- (1) the conditions described under section 3 of this chapter are present within a unit;



(2) an unsuccessful attempt is made to convene the legislative body for the purpose of adopting an emergency ordinance under this chapter; and

(3) in the case of a municipality, an unsuccessful attempt is made to convene the works board to act under this chapter as if the works board were the legislative body;

the executive of a municipality or the presiding officer of a county executive may declare a restriction on the sale of firearms anywhere within the unit for a period of not more than seventy-two (72) hours after the restriction is declared. A declaration under this section has the same effect as an ordinance adopted under section 4 of this chapter and becomes effective and expires as provided in section 5 of this chapter.

SECTION 14. IC 35-50-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 8. (a) The state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

(b) After a person has been convicted and sentenced for a felony committed after sentencing for a prior unrelated felony conviction, the person has accumulated two (2) prior unrelated felony convictions. However, a conviction does not count for purposes of this subsection, if:

(1) It has been set aside; or

(2) It is one for which the person has been pardoned.

(c) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(d) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

(e) The court shall sentence a person found to be a habitual criminal to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three (3) times the presumptive sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

(f) If all three (3) felony convictions are for violations of IC 35-42-1, IC 35-42-2-1, IC 35-42-2-1.5, IC 35-42-2, IC 35-42-3, IC 35-42-4, IC 35-42-5, or IC 35-43-1-1, the court shall sentence



a person found to be a violent habitual criminal to an additional term of life imprisonment.

SECTION 15. IC 35-50-2-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1994]: Sec. 11. (a) As used in this section, "assault weapon" means a firearm that shoots automatically more than one (1) shot without manual reloading by a single function of the trigger.

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used an assault weapon in the commission of the offense.

(c) If after a sentencing hearing a court finds that a person who committed an offense used an assault weapon in the commission of the offense, the court shall sentence the person to an additional fixed term of imprisonment that is:

- (1) not less than the presumptive sentence for the underlying offense; and
- (2) not more than two (2) times the presumptive sentence for the underlying offense.

However, the additional sentence imposed under this subsection may not exceed ten (10) years.

SECTION 16. [EFFECTIVE JULY 1, 1994] SECTIONS 1 through 11 of this act apply to crimes committed after June 30, 1994.

SECTION 17. An emergency is declared for this act.



President of Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana