

SA2003RF0047,
Amnt #1-S



Citizens Against Violent Crime

Amend Three Strikes to Violent Felonies Only

TRACY,

ENCLOSED AS THE AMENDED SA 2003RF0047,

THIS IS A SUBSTANTIVE AMENDMENT TO THE INITIAL DRAFT,
IN SECTION 4 289.5, ~~SB~~

THANK YOU

PH 714-547-9842

SENT, NEXT TO LAST DRAFT BEFORE, THIS IS THE FINAL.

RECEIVED
OCT 10 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

SA2003RF0047,
AmDT. #1-S



1625 W.17th St, Suite 105
Santa Ana Ca 92705

I, James R Benson acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow signatures for this iniative to be used for any purpose other than qualification of the measure for the ballot.

Dated this 11TH day of OCTOBER, 2003

RECEIVED
OCT 10 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Citizens Against Violent Crime
12922 Harbor Boulevard, Garden Grove, CA 92840
(714)-547-9842

THE THREE STRIKES AND CHILD PROTECTION ACT OF 2004

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of the State of California, residents of the afore-described County (or City and County), hereby propose amendments to Penal Code Sections 289, 667, 667.1, 667.5, 1170.12, 1192.7 and 707 of the Welfare and Institutions Code, relating to the sentencing of individuals for a third serious or violent felony after having been convicted of two prior serious or violent felonies, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding primary or general election or at any special statewide election held prior to that primary or general election or as otherwise provided by law. The proposed statutory initiative reads as follows:

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

SECTION 1. TITLE

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

SECTION 2. FINDINGS AND DECLARATIONS

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

- (a) Proposition 184 (the "3 Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies;
- (b) Proposition 184 did not set reasonable limits to determine what criminal acts to prosecute as a second and/or third strikes;
- (c) Since its enactment, Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars (\$800,000,000) per year.

SECTION 3. PURPOSES

The People do hereby enact this measure to:

- (a) Continue to Protect the People from criminals who commit serious and/or violent crimes;
- (b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;

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

(d) To protect Children from dangerous Sex Offenders and reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify increased punishment according to this act.

SECTION 4 SEX OFFENDERS OF CHILDREN

(This format presents struck wording in ~~*italics and strikeout*~~ and new wording in *italics*.)

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

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

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

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

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

(1) Was unconscious or asleep.

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

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