Some of the Serious Violent Crimes Eligible For Early Release Under the Governor’s Plan

- Assault with a deadly weapon
- Rape of an unconscious/intoxicated victim
- Involuntary or vehicular manslaughter
- Battery with personal infliction of serious bodily injury
- Exploding a destructive device with intent to injure
“Non-Violent Felony Offense” Is Not Defined in the Governor’s Plan or Anywhere Else in California Law

The term “non-violent felony offense” is not defined in the initiative, or elsewhere in California law. However, Penal Code section 667.5(c), which has been the law in California since 1977, defines “violent felony” with a list of some 23 offenses. That list currently includes crimes such as murder and attempted murder, mayhem, forcible rape (but not all rapes), forcible sexual assault crimes (but not all of them), felonies involving great bodily injury being inflicted on a victim, felonies involving firearm use, robbery, some arsons, kidnapping, carjacking, some felonies involving explosives, and any felony punishable by death or in the state prison for life. Presumably, any felony not included in the definition of “violent felony” would be a “non-violent felony” for purposes of the initiative.

Voters may imagine that “non-violent felonies” are limited to low-level crimes like drug possession or auto burglary. But California also has a “serious felony” list, created by Proposition 8, enacted by the voters at the June 8, 1982, election. This serious felony list is much longer than the violent felony list and is contained in Penal Code section 1192.7(c). The violent felony list is a subset of the serious felony list meaning that violent felonies are also serious felonies. There are numerous serious felonies that are referred to as “not violent” under California law, but which are, in fact, violent in nature. Following is a partial list of these felonies:

- Threats to a crime victim or witness (Pen. Code § 136.1)
- Active participation in a criminal street gang (Pen. Code § 186.22(a))
- Various felonies committed for gang purposes (Pen. Code § 186.22(b))
- Vehicular manslaughter (Pen. Code §§ 191.5 & 192(c))
- Involuntary manslaughter (Pen. Code § 192(b))
- Battery with personal infliction of serious bodily injury (Pen. Code § 243(d))
- Throwing acid or flammable substances (Pen. Code § 244)
- Assault with a deadly weapon (Pen. Code § 245(a)(1))
- Assault with a deadly weapon on a peace officer or firefighter (Pen. Code § 245(c))
- Discharging firearm at an occupied dwelling, building, vehicle, or aircraft (Pen. Code § 246)
- Rape where victim legally incapable of giving consent (Pen. Code § 261(a)(1))
- Rape by intoxicating substance (Pen. Code §§ 261(a)(3) & 262(a)(2))
- Rape where victim unconscious of the act (Pen. Code §§ 261(a)(4) & 262(a)(3))
- Rape by threat of public official (Pen. Code §§ 261(a)(7) & 262(a)(5))
- Criminal threats (Pen. Code § 422)
- Arson of a structure or forest land (Pen. Code § 451(c))
- Arson of property (Pen. Code § 451(d))
- Attempted arson (Pen. Code § 455)
- Residential burglary (Pen. Code §§ 459–460(a))
- Grand theft firearm (Pen. Code § 487(c)(2))
- Assault with a deadly weapon by state prison inmate (Pen. Code § 4501)
- Holding a hostage by state prison inmate (Pen. Code § 4503)
- Any felony involving the personal use of a deadly weapon (Pen. Code § 12022(b))
- Exploding a destructive device or explosive with intent to injure (Pen. Code § 18740)
Victims’ Rights and Public Safety Initiatives That Would Be Substantially Weakened By the Governor’s Plan

• Victims’ Bill of Rights [1982, Prop. 8]

• Marsy’s Law [2008, Prop. 9]

• Californians Against Sexual Exploitation Act [2012, Prop. 35]

• Gang Violence and Juvenile Crime Prevention Act [2000, Prop. 21]

• Three Strikes Law [1994, Prop. 184]
The Governor’s Plan Clearly Conflicts with Other Initiatives and Statutes

The exclusion of enhancements, consecutive sentences, and alternative sentences by the Act is contrary to longstanding existing law and principles in California law. Most significantly, it violates the fundamental principle that punishment should fit the crime. Penal Code section 1170(a)(1) provides that the purpose of imprisonment is punishment and that this purpose is best served by “terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.” In other words, similarly situated offenders should receive similar sentences. The Act, however, treats every prison inmate the same by making inmates eligible for early release after serving the sentence for just one crime, and requires that enhancements, additional crimes, and prior convictions be disregarded.

Proposition 8

Marsy’s Law, Proposition 9
The Act conflicts with Proposition 9, the Victims’ Bill of Rights Act of 2008: Marsy’s Law, enacted on November 4, 2008. In the Findings and Declarations, the “People of the State of California find and declare” that crime victims have “the right to expect the government to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and justice itself are not eroded by inadequate resources….” (Section 2, paragraph 1.) Further, “Victims of crime have a collective shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California.” (Section 2, paragraph 5.)

Marsy’s Law amended the California Constitution, to provide:

Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts’ sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

(Cal. Const., art. I, § 28(f)(5), emphasis added.)
The current initiative does exactly what the voters prohibited in Marsy’s Law. It enacts early release policies intended to alleviate prison overcrowding. And it does so, in part, through administrative regulations for credits beyond the “statutorily authorized credits.” It makes many sentencing decisions by judges essentially meaningless—careful judicial decisions as to whether to impose concurrent or consecutive sentences, whether to impose or stay enhancements, and whether to impose or strike prior convictions will all be “excluded” at the prison.

**Proposition 21**
The Act abolishes much of Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998, passed by 62.1 percent of the voters at the March 2000 election. The Findings and Declarations of Proposition 21 recognize not only the effectiveness of the Three Strikes law, but the necessity of imposing adult sanctions in serious juvenile cases. “The people find and declare” in Proposition 21 that “juvenilie crime has become a larger and more ominous threat.” (Section 2 (a).) “Vigorous enforcement and the adoption of more meaningful criminal sanctions, including the voter-approved ‘Three Strikes’ law, Proposition 184, has resulted in a substantial and consistent four year decline in overall crime.” (Section 2 (c).) “The juvenile system is not well-equipped to adequately protect the public from violent and repeat serious juvenile offenders.” (Section 2 (i).) The current initiative conflicts with these findings by eliminating, not only direct filing for some juvenile cases enacted by Proposition 21, but by eliminating the presumption of unfitness in Welfare and Institutions Code section 707(c), which has been in effect since 1980. (Stats. 1979, ch. 1117, §2.)

**Proposition 184**
The Act allows CDCR staff to eliminate the effect of the Three Strikes law, enacted in 1994 by both the Legislature and the voters (Assembly Bill 971; Proposition 184), and amended by the voters in Proposition 36 on November 6, 2012. (Pen. Code §§ 667, 1170.12.) This law is based on the principle of public protection by increased prison terms for the small number of repeat offenders who are responsible for a disproportionate number of serious and violent crimes. The sentence is doubled for those defendants with a prior conviction for a serious or violent felony (“Two Strikes”). Defendants convicted of a new serious or violent felony, with prior convictions for two or more serious or violent felonies, are sentenced to a minimum of 25 years to life (“Three Strikes”). Because the Act will likely treat Two Strikes and Three Strikes as “alternative sentences,” and allow parole consideration after service of the new crime without respect to the prior convictions, it will conflict with Propositions 184 and 36.

**10-20-Life Law**
In addition, the Act could nullify the effect of Penal Code section 12022.53, the 10-20-Life law that was overwhelmingly passed in 1997 to combat gun violence. As noted in Section 1 of the bill, “The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime.” The 10-20-Life law mandates enhancements in certain serious offenses of 10 years for
the use of a gun, 20 years for the intentional discharge of a gun, and life for the discharge of a gun that results in death or great bodily injury. Because the Act excludes consideration of enhancements in determining parole consideration, if a firearm allegation is not used to make an offense a violent offense, the 10-20-Life enhancement will be disregarded.

**Proposition 35, Human Trafficking**

Proposition 35, the Californians Against Sexual Exploitation Act, was approved by 81.3 percent of the voters on November 6, 2012. It increases penalties for human trafficking, including enhancements of 5, 7, or 10 years for infliction of great bodily injury; and an enhancement of five years if the defendant has a prior conviction. (Pen. Code § 236.4(b) & (c).) If the offense involves use of force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury against a minor, the penalty is 15 years to life. (Pen. Code § 236.1(c)(2).)

Proposition 35 finds that human trafficking is “a crime against human dignity and a grievous violation of basic human and civil rights.” (Prop. 35, § 2, ¶ 2.) It found, “We need stronger laws to combat the threats posed human traffickers ....” (Prop. 35, § 2, ¶ 5.) A “Purpose and Intent” of Proposition 35 is “[t]o combat the crime of human trafficking and ensure just and effective punishment of people who promote or engage in the crime of human trafficking.” (Prop. 35, § 3, ¶ 1.)

The Governor’s initiative is contrary to the voters’ determination that we “need stronger laws” for human trafficking and that the sentences imposed for human trafficking are “just and effective.” The authority of CDCR to award conduct credits would allow reduction of the time actually served for human trafficking offenses. Under the initiative, consecutive sentences for multiple victims would be disregarded for parole consideration. Enhancements for great bodily injury or prior offenses could be “excluded” in making human traffickers eligible for parole consideration. The initiative is unclear whether the life term for human trafficking would be considered an “alternative sentence” that would also be “excluded.”
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