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DEPARTMENT OF
POLICE

CITY OF SACRAMENTO
CALIFORNIA

July 20, 1992

HALL OF JUSTICE
815 SIXTH STREET
SACRAMENTO, CA
95814-2495

916-449-5121

JOHN P. KEARNS
CHIEF OF POLICE

Law and Legislation Committee
Sacramento, CA

Honorable Members in Session:

Subject: AB 42X (Wyman) Relating to Murder by Participant in a
Criminal Street Gang

LOCATION AND COUNCIL DISTRICT

City.

SUMMARY

This report describes AB 42X (Wyman) which provides that murder committed while the defendant was participating in a criminal street gang is first degree murder, punishable by death or confinement in the state prison for life without possibility of parole.

STAFF RECOMMENDATION

The Police Department recommends that the Law and Legislation Committee endorse A.B. 42X.

BACKGROUND INFORMATION

Assembly Bill 42X was introduced by Assembly Members Wyman, Baker, Boland, Felando, Harvey, Jones, Mountjoy, Nolan and Woodruff on May 18, 1992. It is an act to amend Sections 189 and 190.2 of the Penal Code, relating to murder. Existing law describes murder of the first degree as all murders which, among other things, are committed in the perpetration of or attempt to perpetrate, certain enumerated crimes and specified sex crimes. The bill would add to the list of specified crimes a murder which was committed when the defendant was participating in a criminal street gang.

The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in the state prison for a term of life without the possibility of parole.

Law and Legislative Committee
Recommendation support of Assembly Bill 42X (Wyman)
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This bill provides for the maximum punishment; it will eliminate short terms for gang related murders. It is anticipated that this bill will have an impact and reduce gang related shootings.

FINANCIAL CONSIDERATIONS

None.

POLICY CONSIDERATIONS

Recent gang related shootings and homicides have shown that gang members are seeking to engage in shootings simply to enhance their reputations among other gang members. Many gang members stated that they are not concerned about serving prison terms as a consequence of their violent gang activity. If government is to adequately protect all of our citizens, the judicial system must have the mechanism to permanently remove individuals who engage in gang related homicide from our community.

MBE/WBE REPORTS

Not applicable.

Respectfully submitted,


JERRY V. FINNEY
Interim Chief of Police

RECOMMENDATION APPROVED:


DAVID MARTINEZ
Deputy City Manager

Contact person:
Larry Gibbs, Acting Captain
Office of the Chief
264-5224

All Districts
August 18, 1992

ASSEMBLY BILL

No. 42

Introduced by Assembly Members Wyman, Baker, Boland,
Felando, Harvey, Jones, Mountjoy, Nolan, and Woodruff

May 18, 1992

An act to amend Sections 189 and 190.2 of the Penal Code,
relating to murder.

LEGISLATIVE COUNSEL'S DIGEST

AB 42, as introduced, Wyman. Murder: gang violence.

(1) Existing law describes murder of the 1st degree as all murders which, among other things, are committed in the perpetration of, or attempt to perpetrate, certain enumerated felonies and specified sex crimes.

This bill would add to the list of specified crimes a murder which was committed when the defendant was participating in a criminal street gang, as specified. Thus, the bill would impose a state-mandated local program by expanding the scope of an existing crime.

(2) Existing law provides that the penalty for a defendant found guilty of murder in the 1st degree shall be death or confinement in the state prison for a term of life without the possibility of parole where one or more special circumstances has been charged and found to be true.

This bill would include within the enumeration of special circumstances a murder which was committed when the defendant was participating in a criminal street gang, as specified.

This bill would amend a provision (Section 190.2 of the Penal Code) which was amended by both Proposition 114 and Proposition 115 of the June 5, 1990, direct primary election. The issue of the validity of this provision, as amended by Proposition 114, as amended by Proposition 115, or as

amended by both, is pending review before the California Supreme Court (*Yoshisata v. Superior Court of Orange County*). This bill would amend this provision, as amended by Proposition 114, and as amended by Proposition 115, so that both versions of the provision would include the changes made by *both* Proposition 114 and Proposition 115 and the changes made by this bill.

(3) This bill would provide that the provisions of the bill shall become effective only when submitted to and approved by the voters.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 189 of the Penal Code, as
2 amended by Proposition 115 (an initiative measure) of
3 the June 5, 1990, direct primary election, is amended to
4 read:

5 189. (a) All murder which is perpetrated by means
6 of a destructive device or explosive, knowing use of
7 ammunition designed primarily to penetrate metal or
8 armor, poison, lying in wait, torture, or by any other kind
9 of willful, deliberate, and premeditated killing, or which
10 is committed in the perpetration of, or attempt to
11 perpetrate, arson, rape, robbery, burglary, mayhem,
12 kidnapping, train wrecking, or any act punishable under
13 *Section 186.22 as a felony or under Section 286, 288, 288a,*
14 *or 289, is murder of the first degree; and all . All other*
15 *kinds of murders are of the second degree.*

16 (b) As used in this section, "destructive device" shall
17 ~~mean~~ *mean* any destructive device as defined in Section
18 12301, and "explosive" shall mean any explosive as
19 defined in Section 12000 of the Health and Safety Code.

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1 (c) To prove the killing was "deliberate and
2 premeditated," it shall not be necessary to prove the
3 defendant maturely and meaningfully reflected upon the
4 gravity of his or her act.

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5 SEC. 2. Section 190.2 of the Penal Code, as amended
6 by Proposition 114 (Ch. 1165, Stats. 1989) of the June 5,
7 1990, direct primary election, is amended to read:

8 190.2. (a) The penalty for a defendant found guilty of
9 murder in the first degree shall be death or confinement
10 in *the* state prison for ~~a term~~ of life without the
11 possibility of parole in any case in which one or more of
12 the following special circumstances has been ~~charged~~
13 ~~and specially~~ found under Section 190.4; to be true:

14 (1) The murder was intentional and carried out for
15 financial gain.

16 (2) The defendant was previously convicted of
17 murder in the first degree or second degree. For the
18 purpose of this paragraph, an offense committed in
19 another jurisdiction which if committed in California
20 would be punishable as first or second degree murder
21 shall be deemed murder in the first or second degree.

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22 (3) The defendant has in this proceeding been
23 convicted of more than one offense of murder in the first
24 or second degree.

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25 (4) The murder was committed by means of a
26 destructive device, bomb, or explosive planted, hidden,
27 or concealed in any place, area, dwelling, building, or
28 structure, and the defendant knew or reasonably should
29 have known that his or her act or acts would create a
30 great risk of death to a human being or human beings.

31 (5) The murder was committed for the purpose of
32 avoiding or preventing a lawful arrest or to perfect, or
33 attempt to perfect, an escape from lawful custody.

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34 (6) The murder was committed by means of a
35 destructive device, bomb, or explosive that the
36 defendant mailed or delivered, attempted to mail or
37 deliver, or cause to be mailed or delivered, and the
38 defendant knew or reasonably should have known that
39 his or her act or acts would create a great risk of death to
40 a human being or human beings.

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1 (7) The victim was a peace officer as defined in
2 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
3 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11 or
4 830.12, who, while engaged in the course of the
5 performance of his or her duties was intentionally killed,
6 and the defendant knew or reasonably should have
7 known that the victim was a peace officer engaged in the
8 performance of his or her duties; or the victim was a
9 peace officer as defined in the above enumerated
10 sections of the Penal Code, or a former peace officer
11 under any of ~~such~~ those sections, and was intentionally
12 killed in retaliation for the performance of his or her
13 official duties.

14 (8) The victim was a federal law enforcement officer
15 or agent, who, while engaged in the course of the
16 performance of his or her duties, was intentionally killed,
17 and the defendant knew or reasonably should have
18 known that the victim was a federal law enforcement
19 officer or agent, engaged in the performance of his or her
20 duties; or the victim was a federal law enforcement
21 officer or agent, and was intentionally killed in retaliation
22 for the performance of his or her official duties.

23 (9) The victim was a firefighter as defined in Section
24 245.1, who, while engaged in the course of the
25 performance of his or her duties, was intentionally killed,
26 and the defendant knew or reasonably should have
27 known that the victim was a firefighter engaged in the
28 performance of his or her duties.

29 (10) The victim was a witness to a crime who was
30 intentionally killed for the purpose of preventing his or
31 her testimony in any criminal or *juvenile* proceeding,
32 and the killing was not committed during the
33 commission, or attempted commission, of the crime to
34 which he or she was a witness; or the victim was a witness
35 to a crime and was intentionally killed in retaliation for
36 his or her testimony in any criminal or *juvenile*
37 proceeding. *As used in this paragraph, "juvenile*
38 *proceeding" means a proceeding brought pursuant to*
39 *Section 602 or 707 of the Welfare and Institutions Code.*

40 (11) The victim was a prosecutor or assistant

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1 prosecutor or a former prosecutor or assistant prosecutor
2 of any local or state prosecutor's office in this state or any
3 other state, or of a federal prosecutor's office, and the
4 murder was *intentionally* carried out in retaliation for,
5 or to prevent the performance of, the victim's official
6 duties.

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7 (12) The victim was a judge or former judge of any
8 court of record in the local, state, or federal system in the
9 State of California, or in any other state of the United
10 States, and the murder was *intentionally* carried out in
11 retaliation for, or to prevent the performance of, the
12 victim's official duties.

13 (13) The victim was an elected or appointed official or
14 former official of the ~~Federal Government~~ *federal*
15 *government*, of a local or ~~State~~ *state* government of
16 California, or of any local or state government of any
17 other state in the United States, and the killing was
18 intentionally carried out in retaliation for, or to prevent
19 the performance of, the victim's official duties.

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20 (14) The murder was especially heinous, atrocious, or
21 cruel, manifesting exceptional depravity. As utilized in
22 this section, the phrase ~~especially~~ "*especially* heinous,
23 atrocious, or cruel, manifesting exceptional ~~depravity~~
24 *depravity*" means a conscienceless; or pitiless crime
25 which is unnecessarily torturous to the victim.

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26 (15) The defendant intentionally killed the victim
27 while lying in wait.

28 (16) The victim was intentionally killed because of his
29 or her race, color, religion, nationality, or country of
30 origin.

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31 (17) The murder was committed while the defendant
32 was engaged in, or was an accomplice in, the
33 commission of, attempted commission of, or the
34 immediate flight after committing, or attempting to
35 commit, the following felonies:

36 (i)
37 (A) Robbery in violation of Section 211 or 212.5.

38 (ii)
39 (B) Kidnapping in violation of ~~Sections~~ *Section* 207

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40 ~~and~~ or 209.

- 1 ~~(iii)~~
 2 (C) Rape in violation of Section 261.
 3 ~~(iv)~~
 4 (D) Sodomy in violation of Section 286.
 5 ~~(v)~~
 6 (E) The performance of a lewd or lascivious act upon
 7 the person of a child under the age of 14 years in violation
 8 of Section 288.
 9 ~~(vi)~~
 10 (F) Oral copulation in violation of Section 288a.
 11 ~~(vii)~~
 12 (G) Burglary in the first or second degree in violation
 13 of Section 460.
 14 ~~(viii)~~
 15 (H) Arson in violation of *subdivision (b) of Section*
 16 ~~447~~ 451.
 17 ~~(ix)~~
 18 (I) Train wrecking in violation of Section 219.
 19 (J) *Mayhem in violation of Section 203.*
 20 (K) *Rape by instrument in violation of Section 289.*
 21 (18) The murder was intentional and involved the
 22 infliction of torture. ~~For the purpose of this section~~
 23 ~~torture requires proof of the infliction of extreme~~
 24 ~~physical pain no matter how long its duration.~~
 25 (19) The defendant intentionally killed the victim by
 26 the administration of poison.
 27 (20) The murder was committed when the defendant
 28 was participating in a criminal street gang in felony
 29 violation of Section 186.22.
 30 (b) ~~Every person whether or not the actual killer~~
 31 ~~found guilty of intentionally aiding, abetting, counseling,~~
 32 ~~commanding, inducing, soliciting, requesting, or assisting~~
 33 *Unless an intent to kill is specifically required under*
 34 *subdivision (a) for a special circumstance enumerated*
 35 *therein, an actual killer as to whom the special*
 36 *circumstance has been found to be true under Section*
 37 *190.4 need not have had any intent to kill at the time of*
 38 *the commission of the offense which is the basis of the*
 39 *special circumstance in order to suffer death or*
 40 *confinement in the state prison for life without the*

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1 possibility of parole.

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2 (c) Every person not the actual killer, who, with the
3 intent to kill, aids, abets, counsels, commands, induces,
4 solicits, requests, or assists any actor in the commission of
5 murder in the first degree shall suffer death or
6 confinement in the state prison for a term of life without
7 the possibility of parole ; in any case in which one or more
8 of the special circumstances enumerated in paragraph
9 ~~(1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13),~~
10 ~~(14), (15), (16), (17), (18), or (19)~~ of subdivision (a) of
11 this section has been charged and specially found to be
12 true under Section 190.4 to be true.

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13 (d) Notwithstanding subdivision (c), every person not
14 the actual killer, who, with reckless indifference to
15 human life and as a major participant, aids, abets,
16 counsels, commands, induces, solicits, requests, or assists
17 in the commission of a felony enumerated in paragraph
18 (17) of subdivision (a), which felony results in the death
19 of some person or persons, and who is found guilty of
20 murder in the first degree therefor, shall suffer death or
21 confinement in the state prison for life without the
22 possibility of parole, in any case in which a special
23 circumstance enumerated in paragraph (17) of
24 subdivision (a) has been found to be true under Section
25 190.4.

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26 (e) The penalty shall be determined as provided in
27 Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

28 SEC. 3. Section 190.2 of the Penal Code, as amended
29 by Proposition 115 (an initiative measure) of the June 5,
30 1990, direct primary election, is amended to read:

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31 190.2. (a) The penalty for a defendant found guilty of
32 murder in the first degree shall be death or confinement
33 in the state prison for a term of life without the
34 possibility of parole in any case in which one or more of
35 the following special circumstances has been found
36 under Section 190.4 ; to be true:

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37 (1) The murder was intentional and carried out for
38 financial gain.

39 (2) The defendant was previously convicted of
40 murder in the first degree or second degree. For the

1 purpose of this paragraph, an offense committed in
2 another jurisdiction which if committed in California
3 would be punishable as first or second degree murder
4 shall be deemed murder in the first or second degree.

5 (3) The defendant has in this proceeding been
6 convicted of more than one offense of murder in the first
7 or second degree.

8 (4) The murder was committed by means of a
9 destructive device, bomb, or explosive planted, hidden,
10 or concealed in any place, area, dwelling, building, or
11 structure, and the defendant knew or reasonably should
12 have known that his or her act or acts would create a
13 great risk of death to a human being or human beings.

14 (5) The murder was committed for the purpose of
15 avoiding or preventing a lawful arrest or to perfect, or
16 attempt to perfect, an escape from lawful custody.

17 (6) The murder was committed by means of a
18 destructive device, bomb, or explosive that the
19 defendant mailed or delivered, attempted to mail or
20 deliver, or cause to be mailed or delivered, and the
21 defendant knew or reasonably should have known that
22 his or her act or acts would create a great risk of death to
23 a human being or human beings.

24 (7) The victim was a peace officer as defined in
25 Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
26 830.35, 830.36, 830.37, 830.4, 830.5, ~~830.5a~~, 830.6, 830.10,
27 830.11 or 830.12, who, while engaged in the course of the
28 performance of his or her duties was intentionally killed,
29 and ~~such~~ *the* defendant knew or reasonably should have
30 known that ~~such~~ *the* victim was a peace officer engaged
31 in the performance of his or her duties; or the victim was
32 a peace officer as defined in the above enumerated
33 sections of the Penal Code, or a former peace officer
34 under any of ~~such~~ *those* sections, and was intentionally
35 killed in retaliation for the performance of his or her
36 official duties.

37 (8) The victim was a federal law enforcement officer
38 or agent, who, while engaged in the course of the
39 performance of his or her duties, was intentionally killed,
40 and ~~such~~ *the* defendant knew or reasonably should have

(A) 1 known that ~~such~~ *the* victim was a federal law
 2 enforcement officer or agent; engaged in the
 3 performance of his or her duties; or the victim was a
 4 federal law enforcement officer or agent, and was
 5 intentionally killed in retaliation for the performance of
 6 his or her official duties.

(C) 7 (9) The victim was a ~~fireman~~ *firefighter* as defined in
 8 Section 245.1, who, while engaged in the course of the
 9 performance of his or her duties, was intentionally killed,
 10 and ~~such~~ *the* defendant knew or reasonably should have
 11 known that ~~such~~ *the* victim was a ~~fireman~~ *firefighter*
 12 engaged in the performance of his or her duties.

(P) 13 (10) The victim was a witness to a crime who was
 14 intentionally killed for the purpose of preventing his or
 15 her testimony in any criminal or juvenile proceeding, and
 16 the killing was not committed during the commission, or
 17 attempted commission, of the crime to which he or she
 18 was a witness; or the victim was a witness to a crime and
 19 was intentionally killed in retaliation for his or her
 20 testimony in any criminal or juvenile proceeding. As used
 21 in this paragraph, "juvenile proceeding" means a
 22 proceeding brought pursuant to Section 602 or 707 of the
 23 Welfare and Institutions Code.

(H) 24 (11) The victim was a prosecutor or assistant
 25 prosecutor or a former prosecutor or assistant prosecutor
 26 of any local or state prosecutor's office in this state or any
 27 other state, or of a federal prosecutor's office, and the
 28 murder was intentionally carried out in retaliation for, or
 29 to prevent the performance of, the victim's official
 30 duties.

(C) 31 (12) The victim was a judge or former judge of any
 32 court of record in the local, state, or federal system in the
 33 State of California, or in any other state of the United
 34 States, and the murder was intentionally carried out in
 35 retaliation for, or to prevent the performance of, the
 36 victim's official duties.

(P) 37 (13) The victim was an elected or appointed official or
 38 former official of the federal government, of a local or
 39 state government of California, or of any local or state
 40 government of any other state in the United States, and

1 the killing was intentionally carried out in retaliation for,
 2 or to prevent the performance of, the victim's official
 3 duties.

4 (14) The murder was especially heinous, atrocious, or
 5 cruel, manifesting exceptional depravity. As utilized in
 6 this section, the phrase ~~especially~~ "especially heinous,
 7 atrocious, or cruel, manifesting exceptional ~~depravity~~
 8 *depravity*," means a conscienceless; or pitiless crime
 9 which is unnecessarily torturous to the victim.

10 (15) The defendant intentionally killed the victim
 11 while lying in wait.

12 (16) The victim was intentionally killed because of his
 13 or her race, color, religion, nationality, or country of
 14 origin.

15 (17) The murder was committed while the defendant
 16 was engaged in, or was an accomplice in, the
 17 commission of, attempted commission of, or the
 18 immediate flight after committing, or attempting to
 19 commit, the following felonies:

20 ~~(i)~~

21 (A) Robbery in violation of Section 211 or 212.5.

22 ~~(ii)~~

23 (B) Kidnapping in violation of Section 207 or 209.

24 ~~(iii)~~

25 (C) Rape in violation of Section 261.

26 ~~(iv)~~

27 (D) Sodomy in violation of Section 286.

28 ~~(v)~~

29 (E) The performance of a lewd or lascivious act upon
 30 the person of a child under the age of 14 years in violation
 31 of Section 288.

32 ~~(vi)~~

33 (F) Oral copulation in violation of Section 288a.

34 ~~(vii)~~

35 (G) Burglary in the first or second degree in violation
 36 of Section 460.

37 ~~(viii)~~

38 (H) Arson in violation of subdivision (b) of Section
 39 451.

40 ~~(ix)~~

- 1 (I) Train wrecking in violation of Section 219.
2 ~~(x)~~
3 (J) Mayhem in violation of Section 203.
4 ~~(xi)~~
5 (K) Rape by instrument in violation of Section 289.
6 (18) The murder was intentional and involved the
7 infliction of torture.
8 (19) The defendant intentionally killed the victim by
9 the administration of poison.
10 (20) The murder was committed when the defendant
11 was participating in a criminal street gang in felony
12 violation of Section 186.22.
13 (b) Unless an intent to kill is specifically required
14 under subdivision (a) for a special circumstance
15 enumerated therein, an actual killer as to whom ~~such~~ *the*
16 special circumstance has been found to be true under
17 Section 190.4 need not have had any intent to kill at the
18 time of the commission of the offense which is the basis
19 of the special circumstance in order to suffer death or
20 confinement in *the* state prison for a ~~term~~ of life without
21 the possibility of parole.
22 (c) Every person not the actual killer, who, with the
23 intent to kill, aids, abets, counsels, commands, induces,
24 solicits, requests, or assists any actor in the commission of
25 murder in the first degree shall suffer death or
26 confinement in *the* state prison for a ~~term~~ of life without
27 the possibility of parole; in any case in which one or more
28 of the special circumstances enumerated in subdivision
29 (a) ~~of this section~~ has been found to be true under
30 Section 190.4.
31 (d) Notwithstanding subdivision (c), every person not
32 the actual killer, who, with reckless indifference to
33 human life and as a major participant, aids, abets,
34 counsels, commands, induces, solicits, requests, or assists
35 in the commission of a felony enumerated in paragraph
36 (17) of subdivision (a), which felony results in the death
37 of some person or persons, who is found guilty of murder
38 in the first degree therefor, shall suffer death or
39 confinement in *the* state prison for life without the
40 possibility of parole; in any case in which a special

1 circumstance enumerated in paragraph (17) of
2 subdivision (a) ~~of this section~~ has been found to be true
3 under Section 190.4.

4 (e) The penalty shall be determined as provided in
5 Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

6 SEC. 4. Sections 1, 2, and 3 of this act affect initiative
7 statutes, and shall become effective only when submitted
8 to and approved by the voters pursuant to subdivision (c)
9 of Section 10 of Article II of the California Constitution.

10 SEC. 5. No reimbursement is required by this act
11 pursuant to Section 6 of Article XIII B of the California
12 Constitution because the only costs which may be
13 incurred by a local agency or school district will be
14 incurred because this act creates a new crime or
15 infraction, changes the definition of a crime or infraction,
16 changes the penalty for a crime or infraction, or
17 eliminates a crime or infraction. Notwithstanding Section
18 17580 of the Government Code, unless otherwise
19 specified in this act, the provisions of this act shall become
20 operative on the same date that the act takes effect
21 pursuant to the California Constitution.