

## USE OF THE HABITUAL OFFENDER LAW

Under the current law, there are approximately 8 people convicted as habitual offenders each year. Although District Attorneys' offices presently choose not to indict every defendant who qualifies for indictment as a habitual offender, a number of reasons related to the language of the statute and the goals of the prosecution can account for this exercise of discretion. **However, it is unreasonable to maintain that the number of convictions and the overall prison population will remain the same if the habitual offender provisions proposed in S.2080 or H.3818 are adopted.** In both bills, the provisions delay and eliminate parole eligibility, necessarily resulting in longer sentences, and greatly expand the class of people who can be indicted as habitual offenders. Moreover, the increased notoriety and politicization of the "three strikes" law will create more public pressure to pursue habitual offender indictments and convictions.

### ∅ Not All Qualifying Defendants Are Convicted as Habitual Offenders Under the Current Law

- **District Attorneys' offices use the habitual offender law sparingly due, in part, to the current language of Chapter 279, §25.**
  - The habitual offender law applies to defendants who have been previously twice convicted of felonies and served **at least 3 years** in state prison for each prior conviction. The indictment is a sentencing enhancement, requiring that the defendant receive the maximum sentence permitted by law for the third offense and be **parole eligible after serving 1/2** of the maximum sentence.
  - As a result, the prosecution may often choose not to indict a defendant as a habitual offender because sentencing in accordance with Chapter 279, §25 could result in earlier parole eligibility.

**EXAMPLE:** Defendant's third offense is armed assault with the intent to rob. If convicted as a habitual offender, the judge must sentence defendant to 20 years with parole eligibility at 10 years. Otherwise, the prosecution can request and the judge can impose a sentence of, for instance, 19-20 years in state prison, making defendant eligible for parole release after serving 19 years.

- **Habitual offender indictments are used as a tool by the prosecution to compel defendants to forgo a trial and plead guilty in exchange for dismissal of the habitual offender indictment.**

### ∅ The New Law Will Result in More Habitual Offender Convictions

- **If the habitual offender provisions proposed in S.2080 and H.3818 become law, District Attorneys will be under pressure from constituents made aware of the law – due to the work of "tough on crime" organizations, victims' advocates, and greater media coverage – to indict people as habitual offenders at every opportunity.**
- **The changes to parole eligibility in the proposed habitual offender provisions create a greater incentive for District Attorneys' offices to pursue habitual offender indictments and convictions.**
  - In both bills, defendants indicted pursuant to **Subsection (a)** are **parole eligible after serving 2/3** of the maximum sentence. If the indictment is pursuant to **Subsection (b)**, defendants are **not eligible for parole**, meaning that they are sentenced to the maximum for the third offense as a mandatory term.

**EXAMPLE:** Defendant's third offense is armed assault with the intent to rob. If convicted as a habitual offender, the judge must sentence defendant to 20 years. If defendant was indicted under Subsection (a), he would be parole eligible after serving 13 and 1/3 years. Under Subsection (b), he would have to serve the entire 20 years with no sentence reductions for good behavior.

- **The habitual offender provisions proposed in S.2080 and H.3818 apply to more people.**
  - **Under S.2080: Subsection (a)** mirrors current law. **Subsection (b)** applies to people charged with one of **59 listed crimes** if they have, on 2 prior occasions, been convicted of listed crimes and served **1 day or more in county jail or state prison**. Therefore, Subsection (b) of S.2080 extends mandatory maximum state prison sentences to many low-level offenders, including people who have never been indicted before, have never been to state prison before, and may have served as little as 2 days in county jail prior to being sentenced as a habitual offender.
  - **Under H.3818: Subsection (a)** applies to people charged with any felony who have 2 prior convictions for which they received sentences of **1 year or more in state prison**, rather than the 3 years currently required. **Subsection (b)** applies to people charged with one of **55 listed crimes** if they have, on 2 prior occasions, been convicted of listed crimes and served **1 day or more in state prison**. While not as overinclusive as S.2080 Subsection (b), H.3818 broadly increases the number of people who can be indicted as habitual offenders as well.