

**Introduced by Senators Wolk and Monning  
(Principal coauthors: Senators Jackson and Leno)**

(Principal coauthor: Assembly Member Eggman)

**(Coauthors: Senators Block, Hall, Hancock, Hernandez, Hill,  
McGuire, and Wieckowski)**

(Coauthors: Assembly Members Cristina Garcia, Quirk, and Mark Stone)

January 20, 2015

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An act to add Part 1.85 (commencing with Section 443) to Division 1 of the Health and Safety Code, relating to end of life.

LEGISLATIVE COUNSEL'S DIGEST

SB 128, as introduced, Wolk. End of life.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill would enact the End of Life Option Act authorizing an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal illness, as defined, to make a request for medication prescribed pursuant to these provisions for the purpose of ending his or her life. The bill would establish the procedures for making these requests. The bill would also establish the forms to request aid-in-dying medication and under specified circumstances an interpreter declaration to be signed subject to penalty of perjury, thereby imposing a crime and state-mandated local program.

This bill would prohibit a provision in a contract, will, or other agreement, or in a health care service plan contract, or health benefit

plan contract, from being conditioned upon or affected by a person making or rescinding a request for the above-described medication. The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, or the rate charged for any policy, from being conditioned upon or affected by the request.

This bill would provide immunity from civil or criminal liability or professional disciplinary action for participating in good faith compliance with the act. The bill would provide that participation in activities authorized pursuant to this bill shall be voluntary.

This bill would make it a felony to knowingly alter or forge a request for medication to end an individual's life without his or her authorization or to conceal or destroy a rescission of a request for medication, if it is done with the intent or effect of causing the individual's death. The bill would make it a felony to knowingly coerce or exert undue influence on an individual to request medication for the purpose of ending his or her life or to destroy a rescission of a request. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide that nothing in its provisions be construed to authorize ending a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute, among others, suicide or homicide.

This bill would require the State Department of Public Health to adopt regulations regarding the collection of information to determine the use of and compliance with the act, and would require the department to annually review a sample of certain records and make a statistical report of the information collected.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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. Part 1.85 (commencing with Section 443) is  
2 added to Division 1 of the Health and Safety Code, to read:

3  
4 PART 1.85. END OF LIFE OPTION ACT  
5

6 443. This part shall be known and may be cited as the End of  
7 Life Option Act.

8 443.1. As used in this part, the following definitions shall apply:

9 (a) “Adult” means an individual 18 years of age or older.

10 (b) “Aid-in-dying medication” means medication determined  
11 and prescribed by a physician for a qualified individual, which the  
12 qualified individual may choose to self-administer to bring about  
13 his or her death due to a terminal illness.

14 (c) “Attending physician” means the physician who has primary  
15 responsibility for the health care of an individual and treatment of  
16 the individual’s terminal illness.

17 (d) “Competent” means that, in the opinion of a court or in the  
18 opinion of an individual’s attending physician, consulting  
19 physician, psychiatrist, or psychologist, the individual has the  
20 ability to make and communicate an informed decision to health  
21 care providers, including communication through a person familiar  
22 with the individual’s manner of communicating, if that person is  
23 available.

24 (e) “Consulting physician” means a physician who is qualified  
25 by specialty or experience to make a professional diagnosis and  
26 prognosis regarding an individual’s illness.

27 (f) “Counseling” means one or more consultations, as necessary,  
28 between an individual and a psychiatrist or psychologist licensed  
29 in this state for the purpose of determining that the individual is  
30 competent and is not suffering from a psychiatric or psychological  
31 disorder or depression causing impaired judgment.

32 (g) “Department” means the State Department of Public Health.

33 (h) “Health care provider” or “provider” means a person  
34 licensed, certified, or otherwise authorized or permitted by law to  
35 administer health care or dispense medication in the ordinary  
36 course of business or practice of a profession, including, but not  
37 limited to, physicians, doctors of osteopathy, and pharmacists.

- 1 “Health care provider” or “provider” includes a health care facility  
2 as identified in Section 1250.
- 3 (i) “Informed decision” means a decision by a terminally ill  
4 individual to request and obtain a prescription for medication that  
5 the individual may self-administer to end the individual’s life, that  
6 is based on an understanding and acknowledgment of the relevant  
7 facts, and that is made after being fully informed by the attending  
8 physician of all of the following:
- 9 (1) The individual’s medical diagnosis and prognosis.  
10 (2) The potential risks associated with taking the medication to  
11 be prescribed.  
12 (3) The probable result of taking the medication to be prescribed.  
13 (4) The possibility that the individual may choose not to obtain  
14 the medication or may obtain the medication but may decide not  
15 to take it.  
16 (5) The feasible alternatives or additional treatment  
17 opportunities, including, but not limited to, comfort care, hospice  
18 care, palliative care, and pain control.
- 19 (j) “Medically confirmed” means the medical opinion of the  
20 attending physician has been confirmed by a consulting physician  
21 who has examined the individual and the individual’s relevant  
22 medical records.
- 23 (k) “Physician” means a doctor of medicine or osteopathy  
24 licensed to practice medicine in this state.
- 25 (l) “Public place” means any street, alley, park, public building,  
26 any place of business or assembly open to or frequented by the  
27 public, and any other place that is open to the public view, or to  
28 which the public has access.
- 29 (m) “Qualified individual” means a competent adult who is a  
30 resident of California and has satisfied the requirements of this  
31 part in order to obtain a prescription for medication to end his or  
32 her life.
- 33 (n) “Self-administer” means a qualified individual’s affirmative,  
34 conscious, and physical act of using the medication to bring about  
35 his or her own death.
- 36 (o) “Terminal illness” means an incurable and irreversible illness  
37 that has been medically confirmed and will, within reasonable  
38 medical judgment, result in death within six months.
- 39 443.2. (a) A competent, qualified individual who is a  
40 terminally ill adult may make a request to receive a prescription

1 for aid-in-dying medication if all of the following conditions are  
2 satisfied:

3 (1) The qualified individual's attending physician has  
4 determined the individual to be suffering from a terminal illness.

5 (2) The qualified individual has voluntarily expressed the wish  
6 to receive a prescription for aid-in-dying medication.

7 (3) The qualified individual is a resident of California and is  
8 able to establish residency through any of the following means:

9 (A) Possession of a California driver license.

10 (B) Registration to vote in California.

11 (C) Evidence that the person owns or leases property in  
12 California.

13 (D) Filing of a California tax return for the most recent tax year.

14 (4) The qualified individual documents his or her request  
15 pursuant to the requirements set forth in Section 443.3.

16 (b) A person may not qualify under the provisions of this part  
17 solely because of age or disability.

18 (c) A request for a prescription for aid-in-dying medication  
19 under this part shall not be made on behalf of the patient through  
20 a power of attorney, an advance health care directive, or a  
21 conservator.

22 443.3. (a) A qualified individual wishing to receive a  
23 prescription for aid-in-dying medication pursuant to this part shall  
24 submit two oral requests, a minimum of 15 days apart, and a written  
25 request to his or her attending physician.

26 (b) A valid written request for aid-in-dying medication under  
27 subdivision (a) shall meet all of the following conditions:

28 (1) The request shall be in substantially the form described in  
29 Section 443.9.

30 (2) The request shall be signed and dated by the qualified  
31 individual seeking the medication.

32 (3) The request shall be witnessed by at least two other adult  
33 persons who, in the presence of the qualified individual, shall attest  
34 that to the best of their knowledge and belief the qualified  
35 individual is all of the following:

36 (A) Competent.

37 (B) Acting voluntarily.

38 (C) Not being coerced to sign the request.

39 (c) At most, one of the two witnesses at the time the written  
40 request is signed may:

1 (1) Be related to the qualified individual by blood, marriage, or  
2 adoption or be entitled to a portion of the person's estate upon  
3 death, but not both.

4 (2) Own, operate, or be employed at a health care facility where  
5 the qualified individual is receiving medical treatment or resides.

6 (d) The attending physician of the qualified individual shall not  
7 be one of the witnesses required pursuant to paragraph (3) of  
8 subdivision (b).

9 443.4. (a) A qualified individual may at any time rescind his  
10 or her request for aid-in-dying medication without regard to the  
11 qualified individual's mental state.

12 (b) A prescription for aid-in-dying medication provided under  
13 this part may not be written without the attending physician  
14 offering the qualified individual an opportunity to rescind the  
15 request.

16 443.5. (a) Before prescribing aid-in-dying medication, the  
17 attending physician shall do all of the following:

18 (1) Make the initial determination of all of the following:

19 (A) Whether the requesting adult is competent.

20 (B) Whether the requesting adult has a terminal illness.

21 (C) Whether the requesting adult has voluntarily made the  
22 request for aid-in-dying medication pursuant to Sections 443.2  
23 and 443.3.

24 (D) Whether the requesting adult is a qualified individual  
25 pursuant to subdivision (m) of Section 443.1.

26 (2) Ensure the qualified individual is making an informed  
27 decision by discussing with him or her all of the following:

28 (A) His or her medical diagnosis and prognosis.

29 (B) The potential risks associated with taking the aid-in-dying  
30 medication to be prescribed.

31 (C) The probable result of taking the aid-in-dying medication  
32 to be prescribed.

33 (D) The possibility that he or she may choose to obtain the  
34 medication but not take it.

35 (E) The feasible alternatives or additional treatment  
36 opportunities, including, but not limited to, comfort care, hospice  
37 care, palliative care, and pain control.

38 (3) Refer the qualified individual to a consulting physician for  
39 medical confirmation of the diagnosis, prognosis, and for a

1 determination that the qualified individual is competent and has  
2 complied with the provisions of this part.

3 (4) Refer the qualified individual for counseling if appropriate.

4 (5) Ensure that the qualified individual's request does not arise  
5 from coercion or undue influence by another person.

6 (6) Counsel the qualified individual about the importance of all  
7 of the following:

8 (A) Having another person present when he or she takes the  
9 aid-in-dying medication prescribed pursuant to this part.

10 (B) Not taking the aid-in-dying medication in a public place.

11 (7) Inform the qualified individual that he or she may rescind  
12 the request for aid-in-dying medication at any time and in any  
13 manner.

14 (8) Offer the qualified individual an opportunity to rescind the  
15 request for medication before prescribing the aid-in-dying  
16 medication.

17 (9) Verify, immediately prior to writing the prescription for  
18 medication, that the qualified individual is making an informed  
19 decision.

20 (10) Ensure that all appropriate steps are carried out in  
21 accordance with this part before writing a prescription for  
22 aid-in-dying medication.

23 (11) Fulfill the record documentation that may be required under  
24 Section 443.16.

25 (b) If the conditions set forth in subdivision (a) are satisfied,  
26 the attending physician may deliver the aid-in-dying medication  
27 in any of the following ways:

28 (1) Dispense aid-in-dying medications directly, including  
29 ancillary medication intended to minimize the qualified individual's  
30 discomfort, if the attending physician meets all of the following  
31 criteria:

32 (A) Is registered as a dispensing physician with the Medical  
33 Board of California.

34 (B) Has a current United States Drug Enforcement  
35 Administration (USDEA) certificate.

36 (C) Complies with any applicable administrative rule or  
37 regulation.

38 (2) With the qualified individual's written consent, the attending  
39 physician may contact a pharmacist, inform the pharmacist of the  
40 prescriptions, and deliver the written prescriptions personally, by

1 mail, or electronically to the pharmacist, who shall dispense the  
2 medications to the qualified individual, the attending physician,  
3 or a person expressly designated by the qualified individual and  
4 with the designation delivered to the pharmacist in writing or  
5 verbally.

6 (c) Delivery of the dispensed medication to the qualified  
7 individual, the attending physician, or a person expressly  
8 designated by the qualified individual may be made by: personal  
9 delivery, United Parcel Service, United States Postal Service,  
10 Federal Express, or by messenger service.

11 443.6. Prior to a qualified individual obtaining aid-in-dying  
12 medication from the attending physician, the consulting physician  
13 shall perform all of the following:

14 (a) Examine the qualified individual and his or her relevant  
15 medical records.

16 (b) Confirm in writing the attending physician’s diagnosis and  
17 prognosis.

18 (c) Verify, in the opinion of the consulting physician, that the  
19 qualified individual is competent, acting voluntarily, and has made  
20 an informed decision.

21 (d) Fulfill the record documentation that may be required under  
22 Section 443.16.

23 443.7. (a) Unless otherwise prohibited by law, the attending  
24 physician may sign the qualified individual’s death certificate.

25 (b) The cause of death listed on an individual’s death certificate  
26 who uses aid-in-dying medication shall be the underlying terminal  
27 illness.

28 443.8. A qualified individual may not receive a prescription  
29 for aid-in-dying medication pursuant to this part, unless he or she  
30 has made an informed decision. Immediately before writing a  
31 prescription for aid-in-dying medication under this part, the  
32 attending physician shall verify that the individual is making an  
33 informed decision.

34 443.9. (a) A request for aid-in-dying medication as authorized  
35 by this part shall be in substantially the following form:

36  
37 REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND  
38 DIGNIFIED MANNER I, ....., am an adult of  
39 sound mind and a resident of the state of California.

1 I am suffering from ....., which my attending physician has determined  
2 is in its terminal phase and which has been medically confirmed.

3 I have been fully informed of my diagnosis and prognosis, the nature of the  
4 aid-in-dying medication to be prescribed and potential associated risks, the  
5 expected result, and the feasible alternatives or additional treatment  
6 opportunities, including comfort care, hospice care, palliative care, and pain  
7 control.

8 I request that my attending physician prescribe medication that will end my  
9 life in a humane and dignified manner if I choose to take it, and I authorize  
10 my attending physician to contact any pharmacist about my request.

11 INITIAL ONE:

12 ..... I have informed one or more members of my family of my decision  
13 and taken their opinions into consideration.

14 ..... I have decided not to inform my family of my decision.

15 ..... I have no family to inform of my decision.

16 I understand that I have the right to rescind this request at any time.

17 I understand the full import of this request and I expect to die if I take the  
18 aid-in-dying medication to be prescribed. I further understand that although  
19 most deaths occur within three hours, my death may take longer, and my  
20 attending physician has counseled me about this possibility.

21 I make this request voluntarily and without reservation.

22

23 Signed:.....

24 Dated:.....

25

26

27 DECLARATION OF WITNESSES

28 We declare that the person signing this request:

29 (a) is personally known to us or has provided proof of identity;

30 (b) signed this request in our presence;

31 (c) is an individual whom we believe to be of sound mind and not under duress,  
32 fraud, or undue influence; and

33 (d) is not an individual for whom either of us is the attending physician.

34 .....Witness 1/Date

35 .....Witness 2/Date

36 NOTE: Only one of the two witnesses may be a relative (by blood, marriage,  
37 or adoption) of the person signing this request or be entitled to a portion of the  
38 person's estate upon death. Only one of the two witnesses may own, operate  
39 or be employed at a health care facility where the person is a patient or resident.

40

1 (b) (1) The written language of the request shall be written in  
2 the same translated language as any conversations, consultations,  
3 or interpreted conversations or consultations between a patient and  
4 his or her attending or consulting physicians.

5 (2) Notwithstanding paragraph (1), the written request may be  
6 prepared in English even where the conversations or consultations  
7 or interpreted conversations or consultations were conducted in  
8 a language other than English if the English language form includes  
9 an attached interpreter’s declaration that is signed under penalty  
10 of perjury. The interpreter’s declaration shall state words to the  
11 effect that:

12  
13 I (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT  
14 TARGET LANGUAGE).

15 On (insert date) at approximately (Insert time), I read the “Request for  
16 Medication to End My Life” to (insert name of individual/patient) in (insert  
17 target language).

18 Mr./Ms. (Insert name of patient/qualified individual) affirmed to me that he/she  
19 understood the content of this form and affirmed his/her desire to sign this  
20 form under his/her own power and volition and that the request to sign the  
21 form followed consultations with an attending and consulting physician.

22 I declare that I am fluent in English and (insert target language) and further  
23 declare under penalty of perjury that the foregoing is true and correct.

24 Executed at (insert city, county, and state) on this (insert day of month) of  
25 (insert month), (insert year).

26 X\_\_\_\_\_Interpreter signature

27 X\_\_\_\_\_Interpreter printed name

28 X\_\_\_\_\_Interpreter address

29

30 (3) An interpreter provided by paragraph (2) shall not be related  
31 to the qualified individual by blood, marriage, or adoption or be  
32 entitled to a portion of the person’s estate upon death. An  
33 interpreter provided by paragraph (2) shall be qualified as described  
34 in subparagraph (H) of paragraph (2) of subdivision (c) of Section  
35 1300.67.04 of Title 28 of the California Code of Regulations.

36 443.10. (a) A provision in a contract, will, or other agreement,  
37 whether written or oral, to the extent the provision would affect  
38 whether a person may make or rescind a request for aid-in-dying  
39 medication, is not valid.

1 (b) An obligation owing under any currently existing contract  
2 may not be conditioned or affected by a qualified individual making  
3 or rescinding a request for aid-in-dying medication.

4 443.11. (a) The sale, procurement, or issuance of a life, health,  
5 accident insurance or annuity policy, health care service plan  
6 contract, or health benefit plan, or the rate charged for a policy or  
7 plan contract may not be conditioned upon or affected by a person  
8 making or rescinding a request for aid-in-dying medication.

9 (b) Notwithstanding any other law, a qualified individual's act  
10 of self-administering aid-in-dying medication may not have an  
11 effect upon a life, health, or accident insurance or annuity policy  
12 other than that of a natural death from the underlying illness.

13 443.12. (a) Notwithstanding any other law, a person shall not  
14 be subject to civil or criminal liability or professional disciplinary  
15 action for participating in good faith compliance with this part,  
16 including an individual who is present when a qualified individual  
17 self-administers the prescribed aid-in-dying medication.

18 (b) A health care provider or professional organization or  
19 association may not subject an individual to censure, discipline,  
20 suspension, loss of license, loss of privileges, loss of membership,  
21 or other penalty for participating or refusing to participate in good  
22 faith compliance with this part.

23 (c) A request by an individual to an attending physician or to a  
24 pharmacist to dispense aid-in-dying medication or provide  
25 aid-in-dying medication in good faith compliance with the  
26 provisions of this part does not constitute neglect or elder abuse  
27 for any purpose of law or provide the sole basis for the appointment  
28 of a guardian or conservator.

29 (d) (1) Participation in activities authorized pursuant to this  
30 part shall be voluntary. A person or entity that elects, for reasons  
31 of conscience, morality, or ethics, not to engage in activities  
32 authorized pursuant to this part is not required to take any action  
33 in support of a patient's decision under this part, except as  
34 otherwise required by law.

35 (2) If a health care provider is unable or unwilling to carry out  
36 an individual's request under this part and the individual transfers  
37 care to a new health care provider, the prior health care provider  
38 shall transfer, upon request, a copy of the individual's relevant  
39 medical records to the new health care provider.

1 (e) Nothing in this part shall prevent a health care provider from  
2 providing an individual with health care services that do not  
3 constitute participation in this part.

4 443.13. A health care provider may not be sanctioned for any  
5 of the following:

6 (a) Making an initial determination that an individual has a  
7 terminal illness and informing him or her of the medical prognosis.

8 (b) Providing information about the End of Life Option Act to  
9 a patient upon the request of the individual.

10 (c) Providing an individual, upon request, with a referral to  
11 another physician.

12 (d) Contracting with an individual to act outside the course and  
13 scope of the provider’s capacity as an employee or independent  
14 contractor of a health care provider that prohibits activities under  
15 this part.

16 443.14. (a) Knowingly altering or forging a request for  
17 medication to end an individual’s life without his or her  
18 authorization or concealing or destroying a rescission of a request  
19 for medication is punishable as a felony if the act is done with the  
20 intent or effect of causing the individual’s death.

21 (b) Knowingly coercing or exerting undue influence on an  
22 individual to request medication for the purpose of ending his or  
23 her life or to destroy a rescission of a request is punishable as a  
24 felony.

25 (c) For purposes of this section, “knowingly” has the meaning  
26 provided in Section 7 of the Penal Code.

27 (d) Nothing in this section limits further liability for civil  
28 damages resulting from other negligent conduct or intentional  
29 misconduct by any person.

30 (e) The penalties in this section do not preclude criminal  
31 penalties applicable under any law for conduct inconsistent with  
32 the provisions of this part.

33 443.15. Nothing in this part may be construed to authorize a  
34 physician or any other person to end an individual’s life by lethal  
35 injection, mercy killing, or active euthanasia. Actions taken in  
36 accordance with this part shall not, for any purposes, constitute  
37 suicide, assisted suicide, mercy killing, homicide, or elder abuse  
38 under the law.

39 443.16. (a) The State Public Health Officer, in consultation  
40 with the State Department of Social Services, shall adopt

1 regulations establishing reporting requirements for physicians and  
2 pharmacists pursuant to this part.

3 (b) The reporting requirements shall be designed to collect  
4 information to determine utilization and compliance with this part.  
5 The information collected shall be confidential and shall be  
6 collected in a manner that protects the privacy of the patient, the  
7 patient's family, and any medical provider or pharmacist involved  
8 with the patient under the provisions of this part.

9 (c) Based on the information collected, the department shall  
10 provide an annual compliance and utilization statistical report  
11 aggregated by age, gender, race, ethnicity, and primary language  
12 spoken at home and other data the department may determine  
13 relevant. The department shall make the report public within 30  
14 days of completion of each annual report.

15 443.17. A person who has custody or control of any unused  
16 aid-in-dying medication prescribed pursuant to this part after the  
17 death of the patient shall personally deliver the unused aid-in-dying  
18 medication for disposal by delivering it to the nearest qualified  
19 facility that properly disposes of controlled substances, or if none  
20 is available, shall dispose of it by lawful means.

21 443.18. Any governmental entity that incurs costs resulting  
22 from a qualified individual terminating his or her life pursuant to  
23 the provisions of this part in a public place shall have a claim  
24 against the estate of the qualified individual to recover those costs  
25 and reasonable attorney fees related to enforcing the claim.

26 SEC. 2. The Legislature finds and declares that Section 1 of  
27 this act, which adds Section 443.16 to the Health and Safety Code,  
28 imposes a limitation on the public's right of access to the meetings  
29 of public bodies or the writings of public officials and agencies  
30 within the meaning of Section 3 of Article I of the California  
31 Constitution. Pursuant to that constitutional provision, the  
32 Legislature makes the following findings to demonstrate the interest  
33 protected by this limitation and the need for protecting that interest:

34 (a) Any limitation to public access to personally identifiable  
35 patient data collected pursuant to Section 443.16 of the Health and  
36 Safety Code as proposed to be added by this act is necessary to  
37 protect the privacy rights of the patient and his or her family.

38 (b) The interests in protecting the privacy rights of the patient  
39 and his or her family in this situation strongly outweigh the public

1 interest in having access to personally identifiable data relating to  
2 services.

3 (c) The statistical report to be made available to the public  
4 pursuant to subdivision (c) of Section 443.16 of the Health and  
5 Safety Code is sufficient to satisfy the public’s right to access.

6 SEC. 3. The provisions of this part are severable. If any  
7 provision of this part or its application is held invalid, that  
8 invalidity shall not affect other provisions or applications that can  
9 be given effect without the invalid provision or application.

10 SEC. 4. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.