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No. _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

GOVERNOR EDMUND G. BROWN JR., MARGARET R. PRINZING, and HARRY BEREZIN,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SACRAMENTO,

Respondent.

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, ANNE MARIE SCHUBERT, an individual and in her personal capacity, and KAMALA HARRIS, in her official capacity as Attorney General of the State of California,

Real Parties in Interest.

Writ Regarding Order by the Sacramento County Superior Court, Case No. 34-2016-80002293-CU-WM-GDS, Department 24, Phone No.: (916) 874-6687, The Honorable Shelleyanne Chang, Presiding

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EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY AND/OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

IMMEDIATE STAY REQUESTED – ELECTION MATTER
CRITICAL DATE: FEBRUARY 26, 2016

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PETITION FOR WRIT OF MANDATE
AND REQUEST FOR IMMEDIATE STAY

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Unless this Court acts, a manifest error by the superior court will keep an initiative off the 2016 ballot that promises to enhance public safety, improve inmate rehabilitation, and avoid the release of prisoners by federal court order. That measure, the "Public Safety and Rehabilitation Act of 2016," if approved by the voters, will affect the lives of hundreds of men and women who are currently incarcerated and ineligible for parole, as well as juvenile offenders at risk of being tried unfairly as adults. This case thus presents a matter of broad public importance that requires quick and final resolution.

The effect of the ruling below is to prevent the Attorney General from issuing a title and summary that petitioners must have before they can even begin to circulate petitions for voters to sign. Each hour that passes without a title and summary to circulate decreases the odds that petitioners will be able to gather enough signatures to qualify the measure for the November 2016 ballot. The Court should immediately stay the decision of the court below to allow the Attorney General to issue her title and summary and order expedited briefing on this Petition.

The legal issue presented by this Petition is whether amendments filed by petitioners to their ballot measure were "reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed." (Elec. Code, § 9002(b), as amended by Sen. Bill No. 1253 (2013-2014 Reg. Sess.) § 5.) To reach the conclusion that the

Attorney General abused her discretion in accepting petitioners' amendments, the superior court disregarded the plain language of the Legislature's amendments to the Elections Code, as well as the proposed initiative itself. In allowing initiative proponents to file amendments within 35 days of an original filing that are "reasonably germane to the theme, purpose, or subject" of the original measure, the Legislature expressly adopted this Court's test for determining whether an initiative satisfies the single subject rule set forth in article II, section 8 of the Constitution. In doing so, the Legislature signaled its clear intent that the amendment provision of Elections Code section 9002 must be given the same liberal construction that this Court has given to the single subject rule: "[T]he single-subject requirement should not be interpreted in an unduly narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Senate v. Jones* (1999) 21 Cal.4th 1142, 1157.)

Rather than apply the plain language and honor the Legislature's intent, the superior court re-wrote the law by construing the new provisions of section 9002 narrowly, and suggesting that substantive amendments must be made within the new 30-day public comment period, not within 5 days after it closes as the statute plainly allows. The lower court reasoned that otherwise the public would not be given a meaningful opportunity to comment on amendments to the proposed measure. This rationale cannot be reconciled with the Legislature's failure to provide for a second public comment period or with the statutory text allowing for a 35-day amendment period.

Because the amendments to the Public Safety and Rehabilitation Act of 2016 unquestionably meet the "reasonably germane"

standard for amendment, and because the voters should be given an opportunity to sign petitions to place the measure on the ballot, and if it qualifies, to vote for or against it (the ultimate public comment) in November 2016, petitioners urgently ask the Court to issue its writ of mandate vacating the superior court's order and allowing the Attorney General to issue her title and summary.

An Immediate Stay and Review By this Court are Essential.

If left uncorrected, the superior court's error will bar voters from even considering whether to sign a measure that would improve public safety by promoting rehabilitation rather than incarceration for juveniles and adults and allow judges, not prosecutors, to decide whether juveniles should be charged as an adult. Meanwhile, hundreds of men and women will remain imprisoned without hope of parole for at least two more years, and many juvenile offenders who might otherwise have been rehabilitated through the juvenile justice system will instead be tried as adults.

The need is all the greater because California is under a federal mandate to reduce its prison population. In 2009, a federal three-judge court ordered the State to reduce its prison population to 137.5% of design capacity to remedy the unconstitutional condition of mental and medical health care in California prisons. The federal court order requires the State to take steps to reduce both its in-state and out-of-state prison population, and the three-judge court has held that if the State fails to reach or maintain a population benchmark, a court-appointed compliance officer would have full authority to order the release of prisoners. (*Plata v. Brown*, (N.D. Cal., Feb. 10, 2014, No. 3:01-CV-01351-TEH), 2, 4-5.) The Public Safety and Rehabilitation Act would provide the state with a durable

solution to prison over-crowding that enhances public safety and avoids the indiscriminate release of prisoners by federal court order.

Waiting until 2018 to qualify this measure for the ballot is not an option. If the superior court's order stands, the people will have been deprived of their right to use the initiative process to remedy problems that urgently require attention now. The ruling of the Court below turns the Legislature's amendment process on its head and thwarts rather than promotes the initiative power granted by article II, section 8 of the Constitution.

By this verified petition, petitioners allege as follows:

JURISDICTION

1. This Court has original jurisdiction over this matter pursuant to article VI, section 10 of the California Constitution, Code of Civil Procedure sections 1085 and 1086, and Rule 8.486 of the California Rules of Court, to decide a dispute where, as here, the case presents issues of great public importance that must be resolved promptly. This is such a case because it involves the people's right to circulate and vote upon initiatives in a timely manner, particularly where, as here, the initiative will enable the State to comply with a federal court order without compromising public safety.

2. Petitioners are entitled to a writ of mandate because they do not have a "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) Action by this Court is necessary in order to ensure that the Attorney General is able to issue a title and summary for the Public Safety and Rehabilitation Act of 2016 immediately in order to allow Petitioners to circulate the measure for

signatures so that it may qualify for the November, 2016 ballot, and to resolve any question regarding the validity of signatures once collected. Petitioners cannot circulate their petitions for signatures without a title and summary, and unless this Court acts, they will be unable to file their petitions in order to qualify the measure in time for the November 2016 election. A traditional appeal in this case clearly could not be completed by that date.

3. Original relief is necessary in this Court rather than the Court of Appeal because this matter presents issues of broad public importance that require speedy and final resolution. Petitioners' signature-gathering firm has advised them that it may become impossible to qualify the measure in time for the November 2016 election if the Attorney General is prohibited from issuing a circulating title and summary by February 26th while the courts are considering the issues raised in this lawsuit. It is therefore imperative to complete the appellate process as quickly as possible. If petitioners were first to file a writ in the Court of Appeal, the party who did not prevail in that proceeding could then seek review in this Court, with additional opportunities for delay at each stage. Such a prolonged process would make it impossible to qualify the measure for the ballot before the courts are able to reach a final resolution on the merits. Furthermore, the issues presented are of statewide significance and broad public importance, including the ability of voters to consider an important statewide ballot measure this year; the question of whether that measure will be available to empower the State to more effectively respond to a federal mandate to reduce its prison population, and to enable adult and juvenile offenders to avail themselves of the rehabilitation provisions of that measure; and the meaning of recent amendments to section 9002 of the

Elections Code. Finally, even if the title and summary were issued, it would be critical for this Court to exercise its jurisdiction to hear the writ to resolve conclusively any question regarding the validity of signatures once collected. Otherwise, the qualification process itself would be clouded by uncertainty, jeopardizing the measure's chances of qualifying, and exposing Petitioners to significant detriment if they devote time and resources to a qualification effort that is subsequently determined to be invalid.

PARTIES

4. Petitioner EDMUND G. BROWN JR. is the Governor of the State of California and a registered voter and taxpayer in the County of Alameda. The amendments to Initiative 15-0121 are the direct result of discussions the Governor and proponents engaged in with other interested parties – including judges, district attorneys, public defenders, victims' rights and juvenile justice advocacy groups – to improve the measure's ability to accomplish the goals of enhancing public safety and rehabilitation. Governor Brown was not a party in the Superior Court proceedings, but as one of the sponsors of the measure, has suffered immediate harm in his efforts to secure sufficient signatures on the measure, qualification of which becomes increasingly unlikely with every day that passes without issuance of a title and summary. Governor Brown has no plain, speedy, and adequate remedy at law.

5. Petitioner MARGARET R. PRINZING is one of the proponents of the Public Safety and Rehabilitation Act of 2016, an active initiative measure currently pending as Initiative 15-0121 in the Office of

the Attorney General. Ms. Prinzing is a registered voter and taxpayer in the County of Alameda. She urgently needs a title and summary for the Public Safety and Rehabilitation Act of 2016 in order to circulate petitions in time to qualify the measure for the November, 2016 election ballot.
Ms. Prinzing was a real party in interest in the Superior Court action below.

6. Petitioner HARRY BEREZIN is one of the proponents of the Public Safety and Rehabilitation Act of 2016, an active initiative measure currently pending as Initiative 15-0121 in the Office of the Attorney General. Mr. Berezin is a registered voter and taxpayer in the City and County of San Francisco. He urgently needs a title and summary for the Public Safety and Rehabilitation Act of 2016 in order to circulate petitions in time to qualify the measure for the November, 2016 election ballot. Mr. Berezin was a real party in interest in the Superior Court action below.

7. Respondent SUPERIOR COURT FOR THE COUNTY OF SACRAMENTO, Hon. Shelleyanne Chang presiding, is a duly qualified Superior Court exercising its judicial powers in connection with the proceeding below.

8. On information and belief, real party in interest CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION is an incorporated nonprofit association recognized as a mutual benefit corporation by the State of California that maintains its headquarters in Sacramento. The Association was a petitioner in the proceeding below.

9. On information and belief, real party in interest ANNE MARIE SCHUBERT is a citizen of the State of California and a registered voter and taxpayer in Sacramento County. Ms. Schubert was a petitioner in the proceeding below.

10. Real party in interest KAMALA HARRIS is the Attorney General of the State of California and was a respondent in the proceeding below. Elections Code section 9004 requires the Attorney General to prepare a circulating title and summary of the chief purposes and points of a proposed initiative measure and to provide it to the proponents of the measure. The ruling of the superior court prevents her from carrying out that duty.

FACTS

11. On December 22, 2015, petitioners submitted "The Justice and Rehabilitation Act" to the Attorney General's Office requesting a circulating title and summary pursuant to Elections Code section 9001. A copy of the December 22, 2015 version of the measure appears as Exhibit 1 to this petition.

12. Under Elections Code section 9002(a), the Attorney General posts all proposed statewide initiative measures on her website for a period of 30 days. During that time, members of the public may submit comments or suggestions about the measure through the website. They may also contact the proponents or their agents directly, because section 9001(b) requires proponents to provide public contact information when they submit their measure to the Attorney General.

13. Section 9002(a)(2) expressly provides that although comments submitted on the Attorney General's website are public records available on request, they "shall not be displayed to the public on the Attorney General's Internet Web site during the public review period." Instead, section 9002(a)(2) provides that the "Attorney General shall

transmit any written public comments received during the public review period to the proponents of the proposed initiative measure."

14. Section 9002(b) allows initiative proponents to submit amendments to their measure for a full 35-day period after their initial filing – *i.e.*, during the 30-day public comment period and up to five days after the review period closes. The amendments are to be "reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed." (Elec. Code, § 9002(b).) Section 9002 does not provide a second public comment period for such amendments.

15. At all relevant stages of the drafting process, proponents and other supporters of the initiative reached out to legal and policy experts, public officials, and other members of the public to solicit feedback about the measure. During the amendment period, the Governor and members of his office indicated that a constitutional amendment would further advance the measure's rehabilitation and public safety goals. The sponsors agreed, and after drafting amendments to the measure, they again engaged in significant outreach concerning the amendments themselves, and accepted suggestions to improve the measure. They then filed the amended measure with the Attorney General on January 25, 2016, within the 35-day period. A copy of the amended measure appears as Exhibit 2 to this petition.

16. The Attorney General accepted the amendments as reasonably germane to the theme, purpose, or subject of the initiative as originally proposed and promptly posted them on her website. On February 11, 2016 the Legislative Analyst's Office issued its fiscal summary of the measure, which becomes part of the circulating title and summary.

17. Pursuant to Elections Code section 9004(b), the Attorney General must provide a copy of the title and summary for the measure to the proponents and the Secretary of State by February 26, 2016.

18. On February 11, 2016 real parties in interest California District Attorneys Association and Anne Marie Schubert filed a petition for writ of mandate alleging that proponents' amendments were not reasonably germane to the theme, purpose, or subject of their initiative as originally proposed and asking respondent Superior Court to order the Attorney General to reject proponents' January 25, 2016 submission as an amendment to Measure No. 15-0121 and to refrain from issuing a title and summary that includes the amendments on or before February 26, 2016.

19. On Wednesday, February 24, 2016, the Sacramento Superior Court issued a peremptory writ of mandate ordering the Attorney General to refrain from issuing a title and summary for the Public Safety and Rehabilitation Act of 2016. A partial copy of the transcript which contains the Court's ruling from the bench appears at Tab 15 of the Appendix.

20. Petitioners urgently seek relief in this Court because the Superior Court's order will prevent them from gathering enough valid signatures in time to qualify for the November, 2016 election ballot. Petitioners' signature-gathering firm has advised them that it would not be possible to gather enough signatures in time to qualify if the lower court's ruling stands. That is because if the Attorney General is required to allow a new 30-day public comment period on the amended measure and if the Legislative Analyst and Attorney General were to take the full amount of time allowed them to issue the fiscal analysis and title and summary, respectively, petitioners would receive their circulating title and summary

three days after the deadline for signed petitions to be submitted to the counties. Even if the Legislative Analyst and Attorney General were able to move more quickly, the additional 30-day public comment period will, as a practical matter, leave insufficient time to gather signatures.

21. Even if the title and summary were to issue on March 25, the Monday following the close of the 30-day period, petitioners would need at least two days to complete the printing of their petitions, or until March 28. The Secretary of State's recommended deadline for submitting petitions for signature verification is April 26, 2016. If petitioners began circulating their petitions for signature on March 28, they would have less than 30 days to gather the nearly one million signatures necessary in order to ensure qualification for the November, 2016 ballot. Under these circumstances, even an expedited process for issuance of the title and summary simply would not allow enough time to qualify the measure for the November ballot.

BASIS FOR RELIEF

22. The people's right of initiative is "one of the most precious rights of our democratic process," and it is the duty of the courts "to jealously guard these powers and construe the relevant constitutional provisions liberally in favor of the people's right to exercise the powers of initiative . . . ." (*Pala Band of Mission Indians v. Bd. of Supervisors* (1997) 54 Cal.App.4th 565, 574, internal quotation marks and citations omitted.)

23. The duty to give a liberal construction to requirements regarding the people's right of initiative and referendum is even stronger when the requirement at issue is a statute rather than a constitutional provision. In *Zaremberg v. Superior Court* (2004) 115 Cal.App.4th 111,

116, the Court of Appeal wrote that "'[t]he ballot box is the sword of democracy. A court will intervene in the . . . process only when there are clear, compelling reasons to do so.'" (Citations omitted.)

24. The amendments that proponents filed on January 25, within the statutory 35-day period, are more than reasonably germane to the theme, purpose or subject of the original measure. The original measure was titled "The Justice and Rehabilitation Act." It required a judge, rather than a prosecutor, to determine whether a juvenile age 14 or older should be tried in adult court or juvenile court, and eliminated the ability of prosecutors to bypass the juvenile court by filing criminal charges directly in adult criminal court. It also expanded parole consideration to include inmates who were sentenced under the Three Strikes law, thereby limiting the effect of Three Strikes punishments on adult inmates granted parole by the Board of Parole Hearings. The amendments clearly further the measure's original purpose of improving rehabilitation by requiring juvenile courts to determine whether juvenile offenders should be retained under the court's jurisdiction or tried as adults, authorizing the Department of Corrections and Rehabilitation to award credits for good behavior and approved rehabilitative or educational achievements, and allowing inmates convicted of a nonviolent offense to become eligible for parole consideration, which will examine the inmate's disciplinary record in prison, programming and rehabilitation, among other things. They also clearly further the measure's original purpose of improving public safety by requiring that regulations implemented in furtherance of these provisions must "protect and enhance public safety."

25. Both the plain meaning and legislative history of Senate Bill 1253, which added the public comment and amendment process

at issue here, demonstrate that the Legislature intended to give initiative proponents authority to make broad amendments to improve their measures, thereby improving the initiative process itself. The Legislature did *not* intend to allow opponents of a measure to derail an initiative by using section 9002 to keep it off the ballot.

26. Even if proponents' amendments should have been treated as a new initiative, the doctrine of substantial compliance applies because all of the policy purposes of section 9002 have already been met. (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1013 ["[A]s long as the fundamental purposes underlying the applicable constitutional or statutory requirements have been fulfilled . . . there has been 'substantial compliance' with the applicable constitutional or statutory provisions . . . ."].)

27. The public comment period is not intended to provide a public forum for discussion of a proposed measure. Although the comments are public records available upon request, section 9002(a) prohibits the Attorney General from displaying them on her website and requires that she forward them *only* to the proponents. Thus, the public comment period is designed to aid the proponents in deciding whether and how to amend their initiative.

28. The public comment purpose of section 9002(a) has been served because petitioners' January 25, 2016 amendments have been posted on the Attorney General's website for 30 days, together with contact information that the public can use to submit comments to the proponents. The only difference is that those comments do not first go through the Attorney General's office before reaching the proponents. (Elec. Code, § 9002(a).)

29. Petitioners themselves reached out to interested parties to discuss the amendments prior to submitting them, thereby satisfying the purpose of allowing proponents to have the benefit of comments from interested parties. Having received those comments, petitioners have declared that they will not submit any further amendments to their measure, regardless of any public comments received. A new public comment period would therefore serve no practical purpose.

30. For all of these reasons, respondent Superior Court abused its discretion by prohibiting the Attorney General from fulfilling her statutory duty to provide a title and summary in time for petitioners to circulate petitions to qualify their measure for the ballot.

RELIEF REQUESTED

Wherefore, petitioners respectfully request that this Court:

1. Issue an immediate temporary stay of respondent Superior Court's order dated February 24, 2016;

2. Issue a peremptory writ of mandate, or such other extraordinary relief as is warranted, directing respondent Superior Court to vacate its order dated February 24, 2016 and allow the Attorney General to issue the title and summary for the Public Safety and Rehabilitation Act of 2016 on or before its due date on February 26, 2016;

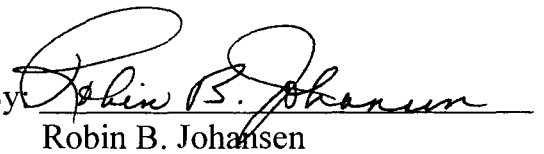
3. Award petitioners their reasonable attorneys' fees and costs, payable by real parties California District Attorneys Association and Anne Marie Schubert;

4. Order such other relief as may be just and proper.

Dated: February 25, 2016

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

By 
Robin B. Johansen

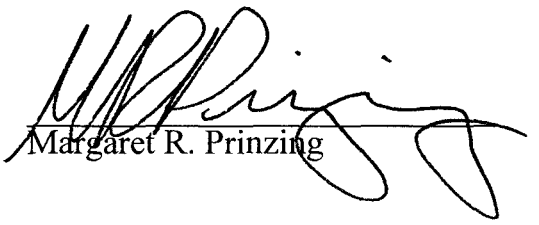
Attorneys for Petitioners
Governor Edmund G. Brown Jr.,
Margaret R. Prinzing, and Harry Berezin

VERIFICATION

I, Margaret R. Prinzing, declare:

I am one of petitioners in this matter. I have read the foregoing Emergency Petition for Writ of Mandate and Request for Immediate Stay and/or Other Appropriate Relief and know its contents. The same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of February 2016, at San Leandro, California.



Margaret R. Prinzing

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION AND STATEMENT OF THE CASE

The sponsors of the Public Safety and Rehabilitation Act of 2016 originally proposed the measure to enhance public safety by focusing on rehabilitation for juvenile and adult offenders. After receiving significant input from stakeholders, they submitted amendments to further the measure's purposes. Members of the California District Attorneys Association were among those consulted, and they have opposed the measure on substantive grounds. Knowing that proponents intend to qualify their measure for the November 2016 ballot, the district attorneys sued, claiming that the amendments to the measure violate Elections Code section 9002(b), which allows amendments that are "reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed" after a 30-day public comment period. They argued that the amendments must be treated as a new measure and that there must be another 30-day public comment period before the Attorney General could issue her title and summary and proponents could begin gathering signatures. By that time, as the district attorneys well knew, it would be too late to qualify the initiative for the November ballot.

The trial court agreed with the district attorneys and ordered that the Attorney General must refrain from issuing a title and summary until after she had allowed 30 days for public comment on her website. Given the election calendar, that order would leave petitioners *at most* 28 days to gather nearly one million signatures before petitions must be submitted in order to qualify for the November ballot. The trial court reasoned that the amendments were not reasonably germane to the theme, purpose, or subject of the original measure and that the public had to be

allowed to comment on the amendments via the Attorney General's website, since the amendments were filed after the close of the 30-day public comment period.

The plain language and legislative history of section 9002 contradict the trial court's reasoning in every way. By adopting this Court's standard for judging whether a measure complies with the single subject rule, the Legislature clearly signaled its intent that both the Attorney General and the courts should interpret the amendment provisions of section 9002 broadly. Furthermore, by providing that public comments could *not* be displayed on the website and would only be sent to the proponents, the Legislature signaled that it did not intend to create a public forum for discussion of pending initiatives, but to provide proponents a tool that they could use to improve their measures if they so chose. Because petitioners have already discussed their measure with a wide circle of interested parties, including members of the California District Attorneys Association, and because they have no intention of further amending their initiative, the public comment period ordered by the lower court will serve no purpose other than to keep the measure from qualifying for the November ballot.

Rather than heeding the Legislature's intent, the lower court adopted both a narrow view of the original measure and a narrow view of the reasonably germane test under section 9002. Concluding that the original measure's subject was "juvenile justice" and pointing to the fact that the amended measure expanded that subject to focus on adult offenders, the court held that the two were not reasonably germane. The court also remarked on the scope of the amendments to the original

measure, which added a constitutional amendment to what had been a statutory initiative.

Moreover, the Superior Court suggested during oral argument that substantive, even "sweeping" amendments are allowed during the 30-day public comment period, but stated that only technical, nonsubstantive amendments can be made in the final five days after the 30-day public comment period. There is no support whatsoever for this in the plain language of the statute, which on its face allows for substantive amendments during the full 35-day period so long as those amendments are "reasonably germane."

The Superior Court was concerned that otherwise, initiative proponents could do the equivalent of a "gut and amend," by filing a pro forma initiative and then filling in the substance at the end of the 35-day period. But the statute expressly protects against this possibility. Elections Code section 9002(b) provides that "amendments shall not be submitted if the initiative measure as originally proposed would not effect a substantive change in law." Surely there is no ground for reading the five-day amendment period out of the statute to remedy a harm that did not occur here and, if it had, would have precluded submission of the amendment in the first instance.

The court's analysis cannot be squared with the fact that in adopting a term of art like the "reasonably germane" test, the Legislature also adopted the case law that applied it. As this Court well knows, the test has been used to uphold numerous measures that have included far more diverse provisions than those at issue here, including Proposition 8 (1982), which dealt with matters ranging from restitution to school safety, and

Proposition 21 (2000), a juvenile justice measure that also expanded the Three Strikes law for adult offenders.

Here, the theme of the measure, as originally filed, is rehabilitation and public safety. The title focuses on rehabilitation, and, as stated in the findings of the original version, the goal of the measure is to "[e]nsure that California's juvenile and criminal justice system resources are used wisely to rehabilitate and protect public safety." (Pet., Exh. 1, § 3.) The original draft advanced those goals not just for juveniles, but for adults, with a provision expanding parole eligibility for state prisoners whose crimes were committed before the age of 23. The amendments to the measure further those twin purposes by (1) authorizing the Department of Corrections and Rehabilitation to award credits for rehabilitation, good behavior, and educational achievements, (2) providing that non-violent inmates are eligible for parole after completing the full sentence for their primary offense, and (3) requiring the Department to certify that its implementing regulations protect and enhance public safety.

Because the amendments are reasonably germane and because it is imperative that the people have an opportunity to vote on this measure in November, the Court should immediately stay the lower court's order and allow the Attorney General to issue her title and summary.

WRIT RELIEF IS APPROPRIATE

This case presents an issue of great public importance not only because it will decide whether a much-needed public safety measure will appear on the November 2016 ballot, but because it will affect how the Legislature's newly enacted initiative amendment process is implemented. If the lower court's decision is allowed to stand, the Attorney General may

take a much narrower view of whether an amendment is reasonably germane to its original measure than the Legislature intended. That result will prevent initiative proponents from partnering with others to improve their measure, whether to address unintended consequences or to strengthen it by adding a constitutional provision. It will encourage strike suits, like the one that prompted this writ, by opponents of a measure to try to keep an initiative off the ballot. And it will discourage proponents from using the amendment process as the Legislature intended, because they will be unsure of the kinds of amendments they will be allowed to file.

ARGUMENT

I.

THE AMENDMENTS TO THE MEASURE ARE REASONABLY GERMANE TO THE ORIGINAL VERSION'S THEME, PURPOSE, OR SUBJECT

A. Elections Code Section 9002 Applies the Single Subject Test to Amendments

Elections Code section 9002[1] clearly echoes well-established case law regarding the single subject rule, which requires the various provisions of a bill to be reasonably germane to the subject or purpose of the measure. (*See, e.g., Legislature v. Eu* (1991) 54 Cal.3d 492, 512 ["'[A]n initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, all of its parts are reasonably germane to each other, and to the general purpose or object of the initiative"], emphasis and internal quotation marks omitted, citing *Brosnahan v. Brown* (1982)

[1] Unless otherwise stated, all further statutory references are to the Elections Code.

32 Cal.3d 236, 245.) Indeed, in describing the single subject rule, this Court has used language identical to that included in section 9002. (*See, e.g., Californians for an Open Primary v. McPherson* (2006) 38 Cal.4th 735, 764 ["reasonably germane to a common theme, purpose, or subject"]; *Senate v. Jones* (1999) 21 Cal.4th 1142, 1158 ["reasonably germane to a common theme or purpose"].)

By adopting language drawn from this Court's single subject jurisprudence, the Legislature made clear its intent to incorporate the courts' liberal interpretation of that rule in favor of the right of initiative in general. (*See Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 19, quoting *Harris v. Reynolds* (1859) 13 Cal. 514, 518 ["The rule of construction of statutes is plain. When they make use of words and phrases of a well-known and definitive sense in the law, they are to be received and expounded in the same sense in the statute."].)

The Legislature, of course, "is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof." (*People v. Harrison* (1989) 48 Cal.3d 321, 329.) The Legislature was clearly aware that California courts have long held that "the single-subject requirement should not be interpreted in an unduly narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Senate v. Jones*, *supra*, 21 Cal.4th at 1157.) By adopting the "reasonably germane" language and enlarging it to allow amendments that are germane not only to the initiative's subject, but its "theme, purpose, *or* subject," the Legislature clearly signaled its intent to allow a broad range of amendments.

This Court has given a particularly liberal meaning to the "reasonably germane" test in the area of criminal justice. In *Brosnahan v. Brown* (1982) 32 Cal.3d 236, for example, the Court rejected a challenge to Proposition 8, the Victims' Bill of Rights, a measure that addressed everything from bail to diminished capacity to safe schools. The Court nevertheless found that "[e]ach of [Proposition 8's] several facets bears a common concern, 'general object' or 'general subject,' promoting the rights of actual or potential crime victims." (*Brosnahan v. Brown*, *supra*, 32 Cal.3d at 247.)

> Proposition 8 constitutes a reform aimed at certain features of the criminal justice system to protect and enhance the rights of crime victims. This goal is the readily discernible common thread which unites all of the initiative's provisions in advancing its common purpose.
>
> (*Id.*)

This held true even for the "safe schools" provision, the Court reasoned, because the right to public safety extended to safety from criminal behavior at schools. (*Id.* at 248.)

This Court's decision in *Manduley v. Superior Court* (2002) 27 Cal.4th 537 is also instructive. In that case, the Court held that Proposition 21, the Gang Violence and Juvenile Crime Prevention Act, which expanded the circumstances in which prosecutors could file charges against juveniles in adult court, satisfied the single subject rule. Opponents argued that the measure contained at least three subjects: (1) gang-related crime; (2) the sentencing of repeat offenders; and (3) juvenile justice. (*Id.* at 573.) The Court rejected the claim, finding that the general purpose of the measure was to address the problem of juvenile and gang-related crime.

(*Id.* at 575-576.) Although Proposition 21 was styled primarily as a "juvenile crime" initiative, it added a number of crimes to the list of felonies that qualify as strikes under the Three Strikes law. (*Id.* at 577.) Notwithstanding the fact that some of the newly-added crimes did not "bear an obvious relationship to juvenile or gang offenders," the Court concluded that "[t]he circumstance that the Three Strikes provisions affect adults in addition to juveniles and gang members does not mean that these provisions are not reasonably germane to the purpose of the initiative." (*Id.* at 577-578.) '"[I]t is well-established that an initiative may have "collateral effects" without violating the single-subject rule.'" (*Id.* at 578, quoting *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 254-255.)

B. The Amendments Further the Original Measure's Purposes of Rehabilitation and Public Safety

The measure at issue here is narrower in scope than either Proposition 8 or Proposition 21. The purpose of the measure, as originally filed, was to "[e]nsure that California's juvenile and criminal justice system resources are used wisely to rehabilitate and protect public safety" and to ensure that our "juvenile and criminal justice systems effectively stop repeat offending and improve public safety." (I App. at 97.) Its original title, "The Justice and Rehabilitation Act," reflects these purposes.

The measure required a judge, rather than a prosecutor, to determine whether a juvenile age 14 or older should be tried in adult court or juvenile court, and eliminated the ability of prosecutors to bypass the juvenile court by filing criminal charges directly in adult criminal court. (*Id.* at 98-117.) Although these provisions apply to juveniles, they directly affect the adult criminal justice system because they determine when

juveniles will be tried in adult court and if convicted, sentenced to state prison in many instances. In addition, the original measure included a provision regarding juvenile records (*id.* at 117-119), which applies to adults, and a provision that provided parole eligibility to adult inmates who are convicted and sentenced to state prison. (*Id.* at 120-121; *see also* Pen. Code, § 3051(b)(1)-(3).) The parole provision expanded parole consideration to include inmates who were sentenced under the Three Strikes law, thereby limiting the effect of Three Strikes punishments on adult inmates granted parole by the Board of Parole Hearings. (I App. at 120-121.) This original provision would have had a significant impact on adult prisoners by authorizing parole eligibility for thousands of offenders who committed their offenses before the age of 23 and were sentenced under the Three Strikes law. A parole grant would mean that their release would necessarily truncate sentencing enhancements, consecutive sentences, or Three Strikes punishments.

The amendments clearly relate to these provisions and further the purposes of the measure as originally filed. The amended version, like the original measure, requires a judge, rather than a prosecutor, to determine whether a juvenile age 14 or older should be tried in adult court or juvenile court. Both versions eliminate the ability of prosecutors to bypass the juvenile court by filing criminal charges directly in adult criminal court. (*Compare* I App. at 98-117, with *id.* at 127-136.) Although the revised version streamlined these provisions, it maintained their core substance.

In addition, both versions address parole for adult offenders. The original measure included a provision that expanded parole consideration to inmates who were sentenced under the Three Strikes law,

including for violent offenses. (*Id.* at 137; *see also* Pen. Code, § 3051(b)(1)-(3).) After it became clear to the proponents that many law enforcement groups, including district attorneys, would oppose parole eligibility for violent offenders, as permitted by the original measure, they modified the parole provision to provide that inmates who have served the full term for their primary offense are eligible for parole, but they limited this eligibility to non-violent offenders. (II App. at 195, ¶ 7.) Pursuant to this provision, juveniles who are tried as adults would be eligible for parole after completing the sentence for their primary offense. Parole, of course, includes consideration of an inmate's rehabilitation. Like Proposition 21, the fact that the parole and credit provisions would apply to adults, in addition to juveniles who are tried as adults, does not alter the fact that the provisions are germane to the goals of rehabilitation and public safety.

The other changes to the original version were also the result of significant outreach to stakeholders interested in accomplishing these same purposes, including the Governor and several district attorneys. They include: (1) eliminating the juvenile records provision; (2) authorizing the Department of Corrections and Rehabilitation to award credits for rehabilitation, educational achievement and good behavior; and (3) requiring the Department of Corrections and Rehabilitation to certify that the regulations the Department adopts to implement the parole and credit provisions protect and enhance public safety. (I App. at 46-56.) The proponents also amended the measure's findings to explain that these changes, like the ones proposed in the original measure, were intended to "[p]rotect and enhance public safety" and "[s]top the revolving door of crime by emphasizing rehabilitation, especially for juveniles." (*Id.* at 46.) These amendments are not only consistent with the theme, purpose, or

subject of the original measure, they directly advance the measure's goals by putting additional emphasis on rehabilitation and offering juveniles who are tried in the adult system the opportunity to earn credits and to be eligible for parole.

Notwithstanding the common themes of rehabilitation and public safety, the trial court concluded that the amendments were not reasonably germane to the theme, purpose, or subject of the original measure. The trial court reasoned that the amendments addressed reform of the adult justice system, while the original measure focused on the juvenile system. The trial court, of course, ignored the fact that the changes to the juvenile transfer system directly affect the adult system because they determine who will be tried in adult court. The trial court also ignored the other provisions in the original measure that addressed the reform of the adult system, including the provision regarding parole eligibility for adult offenders. Finally, in language that mirrors this Court's decision in *Manduley*, but uses it to reach the opposite conclusion, the trial court found that the amendments were not germane to the original measure even though the court acknowledged that the amendments would have "an impact on youthful offenders."

II.

SB 1253'S AMENDMENT PROVISIONS WERE INTENDED TO AID PROPONENTS BY ALLOWING BROAD AMENDMENTS

A. SB 1253 Was Intended to Permit Broad Substantive Amendments

Even if some question remains from the plain meaning of section 9002 whether the "reasonably germane" requirement should be construed broadly or narrowly, the legislative history of SB 1253 makes

clear that the Legislature intended to allow proponents to make broad amendments to their measures after filing.

Prior to SB 1253, proponents were only allowed to make technical, nonsubstantive changes to a measure within 15 days after filing with the Attorney General, without re-starting the clock. (Former Elec. Code, § 9002 (2014).) After the 15-day period, if proponents discovered a drafting error or wished to enlarge the scope of their measure in order to partner with others, their only choice was to begin anew with another initiative. If they wished to withdraw their measure in order to throw their support behind a similar initiative or legislative proposal, they could only do so prior to submitting their petitions for signature verification. (Former Elec. Code, § 9604 (2014).) SB 1253 sought to remove these restrictions by adding a broad amendment process and allowing proponents to withdraw a measure at any time prior to its qualification for the ballot. The purpose behind these changes was to aid *proponents* by giving them opportunities that existing law denied them, not to create a beneficial right that litigants could use to derail a measure they did not like.

The language and history of the bill demonstrate that the Legislature intended to allow broad amendments, not limited ones as the court held. First, the lower court was simply wrong in focusing on the fact that the amended measure added a constitutional amendment to what had been a statutory measure. Nothing in SB 1253 prohibits such an amendment, and given the detailed nature of the California Constitution, proponents often find it necessary to include constitutional amendments in their measures. (*See*, *e.g.*, Cal. Const., art. XIIIB, § 13 (Prop. 10); art. XIIIB, § 12 (Prop. 99).)

Second, an early version of SB 1253 only allowed proponents to "submit amendments to the measure that further its purposes, as determined by the Attorney General." (II App. at 234.) That language was modified, however, on August 4, 2014, to its present form, which allows amendments "that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed," which is much broader.

Finally, the Legislature made one further change to the bill that evinces its intent to allow broad amendments: The original bill enlarged the time for the Legislative Analyst and the Department of Finance to provide their fiscal analysis from 25 to 45 days, and it provided that "[t]he submission of an amendment shall not extend the period to prepare the estimate required by Section 9005." (II App. at 252.) On June 17, 2014, however, the bill expanded the timeframe for fiscal analysis to 50 days, but it retained the requirement that submission of an amendment does not extend that time. In this way, the Legislature accommodated the agencies' need for enough time in which to analyze broad amendments to a measure by giving them at least a full two weeks *after* the close of the amendment period to adjust their analyses to reflect those changes. It did *not*, however, limit the scope of the amendments.

If there were any doubt about the Legislature's intent to permit broad substantive amendments, one need only look at the language that the Legislature included that *limits* what can go into an amendment. At the same time that it added the "reasonably germane" language, the Legislature added this sentence to SB 1253 in order to avoid spot bills: "However, amendments shall not be submitted if the initiative measure as originally proposed would not effect a substantive change in law." (*Id.* at 267.) In other words, proponents cannot submit a placeholder that makes

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no substantive change in law and then submit amendments within the 35-day period.

B. SB 1253 Was Not Intended to Create a Forum for Public Comment

The final version of SB 1253 amends section 9002 of the Elections Code to provide that upon receiving a request for a title and summary for a proposed initiative, "the Attorney General shall initiate a public review process for a period of 30 days by" posting the text of the measure on her website and "[i]nviting, and providing for the submission of, written public comments" on the measure. (§ 9002(a).) SB 1253 expressly states, however, that although the public comments may be obtained upon request as public records, they "shall not be displayed to the public on the Attorney General's Internet Web site during the public review period." (*Id.*) Instead, the new law requires that the Attorney General transmit any written comments *to the proponents alone.* (*Id.*)

This language contrasts with the bill's original text, which tasked the Attorney General with "[p]romoting public participation by inviting on the Attorney General's Internet Web site written public comments on the proposed initiative measure," and which did not limit public display of comments. (II App. at 252.) By the time of final enactment, however, the Legislature had made clear that it was not setting up a public forum on the merits of a proposed initiative, but merely providing a mechanism to help proponents decide whether or not they wished to amend their measures. The new law would give proponents an opportunity to consider public comments, but they were under no obligation to do anything at all with those comments.

The Legislature also made another significant change to the original bill by broadening the scope of public comment. The original bill provided that: "Public comments may address perceived errors in the drafting of, or perceived unintended consequences of, the proposed initiative measure." As enacted, SB 1253 contains no such limitation, thereby permitting a member of the public to suggest that the measure be expanded to make it more effective, which is precisely what happened when the Governor and his staff proposed the amendments at issue here. (II App. at 201, ¶ 7 & *id.* at 194, ¶ 4.)

Ignoring the plain language and legislative history of SB 1254, the trial court opted to re-write the statute to prohibit proponents from submitting substantive amendments after the close of the public comment period. The trial court's ruling reads the five-day period for the submission of amendments after the close of public comment out of existence and creates a new right to public comment for amendments filed after day 30, notwithstanding the fact that the Legislature did not provide for a second public comment period. Finally, the trial court did not explain at what point in time this additional public comment period would be triggered. Would it be permissible for proponents to file substantive amendments on day 25, but not on day 29? The trial court's new standard not only ignores the plain language of section 9002, it is not workable.

III.

ALL OF THE PURPOSES OF THE AMENDMENT PROVISIONS OF SB 1253 HAVE BEEN MET

Even if the amendments were not reasonably germane to the theme, purpose, or subject of the original measure – and they are – the trial court erred in holding that there had not been substantial compliance with

Elections Code section 9002. This Court has recognized that, particularly when it comes to the initiative process, "as long as the fundamental purposes underlying the applicable constitutional or statutory requirements have been fulfilled . . . there has been 'substantial compliance' with the applicable constitutional or statutory provisions," and a measure should be allowed to go forward. (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1013.) That is clearly the case here.

A. The Sponsors of the Measure Satisfied the Purpose of Section 9002 by Engaging in Significant Outreach and Accepting Suggestions to Improve the Original Measure

At all relevant stages of the drafting process, the sponsors and their supporters reached out to legal and policy experts, state and local officials, and other members of the public to solicit feedback about the measure and the draft amendment. The sponsors weighed this feedback, and in many cases accepted suggestions for improvement. (II App. at 194, ¶ 3.) Indeed, this outreach process resulted in the constitutional amendment to which the District Attorneys object. (*Id.*, ¶ 4.) The feedback from the Governor in particular indicated that a constitutional amendment would further advance the measure's rehabilitation and public safety goals. (*Id.* at 201, ¶ 7 & *id.* at 194, ¶ 4.) The sponsors agreed, and filed amendments to the measure with the Attorney General. (*Id.*) Prior to doing so, the sponsors and their allies engaged in significant outreach concerning the amendments themselves, before they were filed, and again accepted suggestions to improve the measure. (*Id.* at 200-201, ¶ 6 & *id.* at 194-195, ¶ 5.) Those outreach efforts included the Executive Director of the California District Attorneys Association, several individual district attorneys, many other members and representatives of the law enforcement

community, judges, justice reform advocates, and crime victims. (*Id.* at 200-201, ¶ 6; *id.* at 194-195, ¶ 5.)

By the time proponents submitted the amended Public Safety and Rehabilitation Act on January 25, 2016, the sponsors' outreach efforts had come to an end. The measure, as amended, had been thoroughly vetted. Proponents understood that by submitting the amended measure as an amendment to the original measure rather than as a new initiative measure, they would not receive public comments via the Attorney General's website on the amendments. (II App. at 218, ¶ 3; *id.* at 190, ¶ 3.) This was not an issue, because proponents had decided that they would not make any further amendments to the measure. They wished to submit the measure in its current form to the voters for their consideration. (*Id.* & *id.* at 195, ¶ 8.)

The sponsors of the Public Safety and Rehabilitation Act of 2016 have substantially complied with the provisions and purpose of SB 1253. Any further public comment period would serve no purpose because proponents will not accept any further amendments to the measure. (*See Cal. High Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 716 [refusing to issue writ that would "require . . . an idle act . . . merely [to] vindicate an abstract right with no practical effect. . . ."].)

B. The Attorney General Posted the Revised Measure and Contact Information for Petitioners on Her Website

When the original measure was filed, the Attorney General posted a copy of the initiative on her website alongside a "Public Comment" button that allowed members of the public to submit comments online. During the 30-day period following the filing of the original

version of the measure, the proponents of the measure received no public comments through the Attorney General's website. (II App. at 218, ¶ 2.)

When proponents filed their amendments to the measure on January 25, 2016, the Attorney General once again posted the full text of the measure on her website for public review. Although she did not post a "Public Comment" button alongside the amended measure, she did post contact information for the proponents, including a mailing address, phone number, and fax number. (*Id.* at 221-222.) Thus, members of the public have been able to contact proponents directly about the amendment since it was posted on the Attorney General's website last month (nearly 30 days ago), as at least two members of the public have done to date. (*Id.*, ¶ 6.) The only difference between this procedure and the procedure under section 9002 is that public comments went directly to the proponents rather than being routed through the Attorney General's website.

Thus, the purpose of the statute has been satisfied, because the proponents had an opportunity to receive public comments on the amended version of the measure for virtually the same period of time allowed for "public comment" on a newly-filed measure. (*Id.*, ¶¶ 5-6.) Even if the Court were to employ a stricter version of the reasonably germane rule, therefore, the Attorney General's posting of the amended measure, along with the proponents' contact information, substantially complied with Elections Code section 9002. The lower court erred in holding to the contrary.

The trial court rejected the proponents' substantial compliance argument, concluding that the proponents' statements that they would not make further amendments were irrelevant, even though the proponents are vested with absolute discretion whether to consider the

public comments, and finding that "mailing a letter is not equivalent to pushing a button on a website." Of course, the trial court ignored the fact that the proponents received ***no*** public comments through the Attorney General's website but two letters through their contact information, which was posted on the Attorney General's website, along with the amendments. More importantly, the trial court ignored the Third District Court of Appeal's recent admonition that "[a] writ is not available to enforce abstract rights to command futile acts with no practical benefits." (*Cal. High Speed Rail Authority v. Superior Court, supra,* 228 Cal.App.4th at 707.) In this case, imposing an additional public comment period would not only be futile because proponents are not obliged to, and will not, make any additional changes based on public comment, but it would also be detrimental to the very interest the trial court was ostensibly trying to protect – the right of citizens to have a say on a significant criminal justice reform measure. As discussed below, the trial court's order, unless stayed and vacated, will have the effect of preventing the voters from considering the measure in November 2016.

C. Delay in Issuance of the Title and Summary Will Cause Public Harm

Because the proponents do not intend to make any additional changes, regardless of the comments they receive, there can be no claim of public harm. (II App. at 29, ¶ 6; *id.* at 190, ¶ 4.) The district attorneys argued that the Legislative Analyst and the Attorney General need to have sufficient time to prepare the fiscal impact report and the title and summary. (I App. at 66.) But both the Legislative Analyst and Attorney General have

completed their work well within the statutory deadlines, without objection. (II App. at 291.)[2]

Nor would the District Attorneys suffer any harm from the issuance of a stay. They had the opportunity to share their views of the amendments with the sponsors of the measure. The fact that the sponsors of the measure elected to proceed notwithstanding the District Attorneys' comments does not constitute harm. If the Attorney General is permitted to issue the title and summary, the District Attorneys, like other members of the public who oppose the measure, are free to refrain from signing petitions to qualify the measure and to campaign against it should it qualify.

By contrast, there is great public harm if the voters are blocked from considering this measure at the November 2016 election. As set forth in petitioners' request for an immediate stay, *supra*, the lower court's decision to prohibit issuance of the Attorney General's title and summary means that there will not be sufficient time to qualify the measure for 2016.

Waiting until 2018 is not an option. California is currently subject to a federal mandate to reduce its prison population. The Public Safety and Rehabilitation Act will empower the State to implement a durable solution to prison overcrowding and enhance public safety by

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[2] The district attorneys also claimed that the proponents have "cut in line" ahead of the proponents of other measures, which makes no sense. (I App. at 66, fn. 1.) The statutory deadlines for the preparation of a fiscal analysis and title and summary run from the date a measure is filed, irrespective of how many other measures have been filed. Thus, the Attorney General's decision to treat proponents' January 25th filing as an amended measure, rather than a new measure, had no impact on the timeline for the issuance of fiscal analyses and titles and summaries for other measures.

emphasizing rehabilitation for juvenile and adult offenders, who should have the opportunity to benefit from these opportunities in 2016, if the voters approve the measure. Otherwise, hundreds of men and women will remain imprisoned for at least two more years, time that they will never be able to recover. It is therefore imperative that the voters have the opportunity to consider the measure on the merits in November 2016.

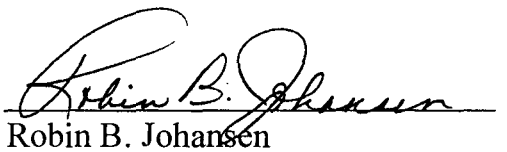
CONCLUSION

For all of these reasons, the Court should order an immediate stay of the Superior Court's order and allow the Attorney General to issue the title and summary for the Public Safety and Rehabilitation Act of 2016.

Dated: February 25, 2016

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

By: 
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Governor Edmund G. Brown Jr.,
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BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 9,562 words as counted by the Microsoft Word 2010 word processing program used to generate the brief.

Dated: February 25, 2016

Robin B. Johansen

THE JUSTICE AND REHABILITATION ACT

SECTION 1. Title.

This measure shall be known and may be cited as "The Justice and Rehabilitation Act."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. The People enact the Justice and Rehabilitation Act to ensure that California's juvenile and criminal justice systems effectively stop repeat offending and improve public safety.

2. Evidence shows that young people sent into the adult criminal justice system are more likely to keep committing crimes compared to young people who are rehabilitated in the juvenile justice system.

3. Evidence shows that rehabilitating youthful offenders, instead of warehousing them, improves public safety and reduces recidivism.

4. Evidence shows that authorizing judges and parole boards to consider release of individuals that have become rehabilitated reduces waste and incentivizes rehabilitation.

5. This measure will reduce costs – and make us safer at the same time. It reduces extreme sentences that fail to rehabilitate and focuses on rehabilitating youth and young adult offenders so they can go on to become law-abiding and productive members of our communities.

6. This Act ensures that people who are dangerous to the public remain incarcerated and that sentences for people convicted of murder or rape are not changed.

SEC. 3. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to:

1. Ensure that California's juvenile and criminal justice system resources are used wisely to rehabilitate and protect public safety.

2. Require judges to sentence youth offenders to the facilities or programs that will rehabilitate them, instead of make them more likely to commit crimes.

3. Require juvenile court rehabilitation sentences for youth offenders under 16.

4. Authorize parole consideration for individuals who were under 23 at the time of their conviction and have been rehabilitated, to incentivize rehabilitation and reduce prison waste.

5. Authorize the sealing of criminal records for convictions before age 21 if the person has been rehabilitated, except for murder or rape convictions.

6. Reduce costs and waste in the justice system by prioritizing rehabilitation and reducing recidivism.

SEC. 4. Judicial Transfer Process.

Sections 602, 707, and 731 of the Welfare and Institutions Code are hereby amended.

Section 602 of the Welfare and Institutions Code is amended to read:

602. (a) Except as provided in subdivision (b), any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

(b) Any person who is alleged, when he or she was ~~14~~ 16 years of age or older, to have committed one of the following offenses ~~shall~~ may be prosecuted under the general law in a court of criminal jurisdiction if the juvenile court orders the minor transferred for adult criminal prosecution after a transfer hearing described in Section 707:

(1) Murder, as described in Section 187 of the Penal Code, if ~~one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is alleged by the prosecutor, and~~ the prosecutor alleges that the minor personally killed the victim.

(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense: ~~, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:~~

(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.

(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.

(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.

(D) Forcible lewd and lascivious acts on a child under 14 years of age, as described in subdivision (b) of Section 288 of the Penal Code.

(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.

(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

~~(G) Lewd and lascivious acts on a child under 14 years of age, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (d) of Section 1203.066 of the Penal Code.~~

(3) Kidnapping for ransom or purposes of robbery or sexual assault, with bodily harm, or in order to facilitate the commission of a carjacking, as described in Section 209.5 of the Penal Code, if the prosecutor alleges that the minor personally committed the offense.

(4) Torture, as described in Section 206 of the Penal Code, if the prosecutor alleges that the minor personally committed the offense.

Section 707 of the Welfare and Institutions Code is amended to read:

707. (a)~~(1)~~ In any case in which a ~~minor~~ person is alleged to ~~be a person described in subdivision (a) of Section 602 by reason of the violation,~~ have committed one of the offenses listed in Section 602(b) when he or she was 16 or 17 years of age ~~or older~~, ~~of any criminal statute or ordinance except those listed in subdivision (b),~~ the District Attorney may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction to be prosecuted under the general law. ~~upon~~ The motion ~~of the petitioner~~ must be made prior to the attachment of jeopardy. Upon such motion, the juvenile court shall ~~cause~~ order the probation ~~officer~~ department to ~~investigate and~~ submit a report on the ~~behavioral patterns and social~~ minor's history, the minor and family's strengths and needs, and community support that promotes youth development. ~~of the minor being considered for a determination of unfitness~~. The report shall include any written or oral statement offered by the victim pursuant to subdivision (b) of Section 656.2 of the Penal Code. ~~Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive:~~

(b)(1) Prior to the transfer hearing and upon motion of the minor, the court shall make a determination whether there is sufficient probable cause that the minor committed the offenses alleged in the transfer motion. The determination may, consistent with subdivision (b) of Section 872 of the Penal Code, be based in whole or in part upon on the sworn testimony of a law enforcement officer and evidence or witnesses offered by the parties. The parties have the right to present and cross examine witnesses.

(2) If the court finds that probable cause has not been established for offenses and enhancements alleged in the transfer motion it shall dismiss the transfer motion and set the matter for a pre-plea hearing. If the court finds that probable cause has been established, it shall set the matter for a transfer hearing to determine whether the minor should be transferred from the juvenile court to a court of criminal jurisdiction.

(c)(1) At the hearing the court shall consider any relevant evidence that the petitioner or the minor may wish to submit and the report submitted by the probation department.

(2) Any victims' statements in the probation report shall be considered by the court to the extent they are relevant to the court's determination of transfer.

(3) The court shall consider and give great weight to the fundamental developmental differences between young people and fully matured adults; the diminished culpability of young people; and

the fact that young people continue to mature well into adulthood and have the capacity to mature and grow with proper rehabilitative services.

(4) In addition to considering the factors set forth in paragraphs (1) through (3) of subdivision (c) above, the juvenile court's evaluation of whether the minor should be transferred to a court of criminal jurisdiction shall include consideration of the following criteria:

(A)~~(i) The degree of criminal sophistication exhibited by the minor.~~ Whether juvenile court jurisdiction would be more likely to result in the minor's rehabilitation. The juvenile court shall consider any relevant factor, including but not limited to the amenability of the minor to the care and treatment of juvenile court, the impact juvenile court and community resources could have on the minor, and the minor's potential to grow and change.

~~(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(B)(i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(C)(i)~~(B) The minor's previous ~~delinquent~~ history.

~~(ii) When evaluating the criterion specified in clause (i), the~~ The juvenile court ~~may give weight to~~ shall consider any relevant factor, including, but not limited to, the seriousness of the minor's previous ~~delinquent~~ juvenile court history and the effect of the minor's family and community environment~~, and childhood~~ any exposure to trauma, ~~on the minor's previous delinquent behavior.~~

~~(D)(i) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to,~~ and the adequacy and appropriateness of the services previously provided to address the minor's needs.

~~(E)(i)~~(C) The circumstances ~~and gravity~~ of the offense alleged in the petition to have been committed by the minor.

~~(ii) When evaluating the criterion specified in clause (i), the~~The juvenile court ~~may give weight to~~ shall consider the circumstances of this incident and consider any relevant factor, including but not limited to, the actual behavior of the ~~person~~ minor, the mental state of the ~~person~~ minor, the ~~person's~~ minor's degree of involvement in the crime, and the level of harm ~~actually~~ personally caused by the ~~person~~ minor.~~, and the person's mental and emotional development~~.

(D) The minor's mental and emotional development and maturity.

The juvenile court shall consider any relevant factor, including but not limited to, the minor's age, maturity, intellectual capacity, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's behavior.

~~A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness.~~

(d) Juvenile court shall be presumed to be the appropriate jurisdiction for a person who was under the age of 18 at the time he or she is alleged to have committed the offense subject to transfer. If the court finds by clear and convincing evidence that the totality of the circumstances demonstrates that the minor would not be better served by the care and treatment available through juvenile court, the court shall order the minor transferred from the juvenile court to a court of criminal jurisdiction. If the court orders transfer, the court shall recite the basis for its decision and set forth the reasons in an order entered upon the minutes.

(e) In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.

~~(2)(A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:~~

~~(i) The minor has previously been found to have committed two or more felony offenses.~~

~~(ii) The offenses upon which the prior petition or petitions were based were committed when the minor had attained 14 years of age.~~

~~(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive:~~

~~(i)(I) The degree of criminal sophistication exhibited by the minor.~~

(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(ii)(I) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(iii)(I) The minor's previous delinquent history.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(iv)(I) Success of previous attempts by the juvenile court to rehabilitate the minor.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(v)(I) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subclause (I) of clauses (i) to (v), inclusive, and findings therefore recited in the order as to each of the those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of those criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea that may have been entered already shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

~~(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses:~~

~~(1) Murder.~~

~~(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.~~

~~(3) Robbery.~~

~~(4) Rape with force, violence, or threat of great bodily harm.~~

~~(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.~~

~~(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.~~

~~(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.~~

~~(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.~~

~~(9) Kidnapping for ransom.~~

~~(10) Kidnapping for purposes of robbery.~~

~~(11) Kidnapping with bodily harm.~~

~~(12) Attempted murder.~~

~~(13) Assault with a firearm or destructive device.~~

~~(14) Assault by any means of force likely to produce great bodily injury.~~

~~(15) Discharge of a firearm into an inhabited or occupied building.~~

~~(16) An offense described in Section 1203.09 of the Penal Code.~~

~~(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.~~

~~(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.~~

~~(19) A felony offense described in Section 136.1 or 137 of the Penal Code.~~

~~(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.~~

~~(21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.~~

~~(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.~~

~~(23) Torture as described in Sections 206 and 206.1 of the Penal Code.~~

~~(24) Aggravated mayhem, as described in Section 205 of the Penal Code.~~

~~(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.~~

~~(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.~~

~~(27) Kidnapping as punishable in Section 209.5 of the Penal Code.~~

~~(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.~~

~~(29) The offense described in Section 18745 of the Penal Code.~~

~~(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.~~

~~(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive:~~

~~(1)(A) The degree of criminal sophistication exhibited by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's~~

~~family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(2)(A) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(3)(A) The minor's previous delinquent history.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(4)(A) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(5)(A) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subparagraph (A) of paragraphs (1) to (5), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of those criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction~~

against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).

(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:

(A) The minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in the state prison for life.

(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 or 12022.53 of the Penal Code.

(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:

(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).

(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in criminal conduct by gang members.

(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.

(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one or more of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of a felony offense, when he or she was 14 years of age or older:

(A) A felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(B) A felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of

~~this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.~~

~~(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.~~

~~(5) For an offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(e) A report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.~~

Section 731 of the Welfare and Institutions Code is amended to read:

731. (a) If a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730 and, in addition, may do any of the following:

(1) Order the ward to make restitution, to pay a fine up to two hundred fifty dollars ($250) for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs.

(2) Commit the ward to a sheltered-care facility.

(3) Order that the ward and his or her family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of the ward.

(4) Commit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, if the ward has committed an offense described ~~in subdivision (b) of Section 707~~ below or in subdivision (c) of Section 290.008 of the Penal Code, and is not otherwise ineligible for commitment to the division under Section 733.

(A) Murder.

(B) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(C) Robbery while armed with a dangerous or deadly weapon.

(D) Rape with force, violence, or threat of great bodily harm.

(E) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(F) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(G) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(H) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(I) Kidnapping for ransom.

(J) Kidnapping for purposes of robbery.

(K) Kidnapping with bodily harm.

(L) Attempted murder.

(M) Assault with a firearm or destructive device.

(N) Assault by any means of force likely to produce great bodily injury.

(O) Discharge of a firearm into an inhabited or occupied building.

(P) An offense described in Section 1203.09 of the Penal Code.

(Q) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(R) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(S) A felony offense described in Section 136.1 or 137 of the Penal Code.

(T) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(U) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(V) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(W) Torture as described in Sections 206 and 206.1 of the Penal Code.

(X) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Y) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(Z) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(AA) Kidnapping as punishable in Section 209.5 of the Penal Code.

(BB) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(CC) The offense described in Section 18745 of the Penal Code.

(DD) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

(b) The Division of Juvenile Facilities shall notify the Department of Finance when a county recalls a ward pursuant to Section 731.1. The division shall provide the department with the date the ward was recalled and the number of months the ward has served in a state facility. The division shall provide this information in the format prescribed by the department and within the timeframes established by the department.

(c) A ward committed to the Division of Juvenile Facilities may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed upon an adult convicted of the offense or offenses that brought or continued the minor under the jurisdiction of the juvenile court. A ward committed to the Division of Juvenile Facilities also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. This section does not limit the power of the Board of Parole Hearings to retain the ward on parole status for the period permitted by Section 1769.

SEC. 5. Judicial Remand Hearing.

Section 1170.17 of the Penal Code is amended to read:

1170.17. (a) When a person is prosecuted for a criminal offense committed while he or she was under 18 years of age and the prosecution was lawfully ~~initiated in a court of criminal jurisdiction without a prior finding that the person is not a fit and proper subject to be dealt with under the juvenile court law,~~transferred to a court of criminal jurisdiction after a juvenile court transfer hearing, upon subsequent conviction for any criminal offense, the person shall be subject to the same sentence as an adult convicted of the identical offense, in accordance with subdivision (a) of Section 1170.19, except under the circumstances described in subdivision (b)~~,~~ or (c)~~, or (d).~~

~~(b) Where the conviction is for the type of offense which, in combination with the person's age at the time the offense was committed, makes the person eligible for transfer to a court of criminal jurisdiction, pursuant to a rebuttable presumption that the person is not a fit and proper subject to be dealt with under the juvenile court law, and the prosecution for the offense could not lawfully be initiated in a court of criminal jurisdiction, then either of the following shall apply:~~

~~(1) The person shall be subject to the same sentence as an adult convicted of the identical offense in accordance with the provisions set forth in subdivision (a) of Section 1170.19, unless the person prevails upon a motion brought pursuant to paragraph (2).~~

(b)(1)~~(2)~~ A person, other than one subject to subdivision (c), for whom prosecution was lawfully initiated in a court of criminal jurisdiction after a juvenile court transfer hearing may bring a motion for a disposition pursuant to juvenile court law following conviction by trial. Upon a motion brought by the person, the court shall order the probation department to prepare a written social study and recommendation concerning the person's ~~fitness~~ potential for rehabilitation if sentenced ~~to be dealt with~~ under the juvenile court law and the court shall ~~either~~ conduct a ~~fitness~~ hearing in which it considers the factors enumerated in Section 707. The court shall impose a criminal sentence unless the person demonstrates by a preponderance of the evidence that a disposition under juvenile court law will best address the rehabilitative needs of the person and protect the community. ~~or suspend proceedings and remand the matter to the juvenile court to prepare a social study and make a determination of fitness. The person shall receive a disposition under the juvenile court law only if the person demonstrates, by a preponderance of the evidence, that he or she is a fit and proper subject to be dealt with under juvenile court law, based on each of the following five criteria:~~

~~(A) The degree of criminal sophistication exhibited by the person. This may include, but is not limited to, giving weight to the person's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the offense, the person's impetuosity or failure to appreciate risks and consequences of criminal behavior; the effect of familial, adult, or peer pressure on the person's actions, and the effect of the person's family and community environment and childhood trauma on the person's criminal sophistication.~~

~~(B) Whether the person can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. This may include, but is not limited to, giving weight to the minor's potential to grow and mature.~~

~~(C) The person's previous delinquent history. This may include, but is not limited to, giving weight to the seriousness of the person's previous delinquent history and the effect of the person's family and community environment and childhood trauma on the person's previous delinquent behavior.~~

~~(D) Success of previous attempts by the juvenile court to rehabilitate the person. This may include, but is not limited to, giving weight to an analysis of the adequacy of the services previously provided to address the person's needs.~~

~~(E) The circumstances and gravity of the offense for which the person has been convicted. This may include, but is not limited to, giving weight to the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

(2)(A) If the court conducting the ~~fitness~~ hearing finds that ~~the person is not a fit and proper subject for juvenile court jurisdiction,~~ it would not best address the rehabilitative needs of the person and protect the community for the conviction to be dealt with under juvenile court jurisdiction, then the person shall be sentenced by the court where he or she was convicted in accordance with ~~paragraph (1).~~ subdivision (a).

(B) If the court conducting the hearing ~~on fitness~~ finds that ~~the person is a fit and proper subject for juvenile court jurisdiction~~ it would best address the rehabilitative needs of the person and protect the community for the person to be sentenced under juvenile court jurisdiction, then the person shall be subject to a disposition pursuant to juvenile court law.~~in accordance with subdivision (b) of Section 1170.19.~~

~~(c) Where the conviction is for the type of offense which, in combination with the person's age at the time the offense was committed, makes the person eligible for transfer to a court of criminal jurisdiction, pursuant to a rebuttable presumption that the person is a fit and proper subject to be dealt with under the juvenile court law, then the person shall be sentenced as follows:~~

~~(1) The person shall be subject to a disposition under the juvenile court law, in accordance with the provisions of subdivision (b) of Section 1170.19, unless the district attorney prevails upon a motion, as described in paragraph (2).~~

~~(2) Upon a motion brought by the district attorney, the court shall order the probation department to prepare a written social study and recommendation concerning whether the person is a fit and proper subject to be dealt with under the juvenile court law. The court shall either conduct a fitness hearing or suspend proceedings and remand the matter to the juvenile court for a determination of fitness. The person shall be subject to a juvenile disposition under the juvenile court law unless the district attorney demonstrates, by a preponderance of the evidence, that the person is not a fit and proper subject to be dealt with under the juvenile court law, based upon the five criteria set forth in paragraph (2) of subdivision (b). If the person is found to be not a fit and proper subject to be dealt with under the juvenile court law, then the person shall be sentenced in~~

~~the court where he or she was convicted, in accordance with the provisions set forth in subdivision (a) of Section 1170.19. If the person is found to be a fit and proper subject to be dealt with under the juvenile court law, the person shall be subject to a disposition, in accordance with the provisions of subdivision (b) of Section 1170.19.~~

~~(d)~~ (c) Upon conviction after trial, ~~Where~~ where the conviction is for the type of offense which~~,~~ ~~in combination with the person's age, does not make~~ would have made the person ~~eligible~~ineligible for transfer to a court of criminal jurisdiction, the person shall be remanded to juvenile court and subject to a disposition in accordance with the provisions of subdivision (b) of Section 1170.19.

SEC. 6. Additional Amendments Relating To Transfer.

Sections 707.01, 707.1, 707.2, and 1732.6 of the Welfare and Institutions Code and Section 1170.19 of the Penal Code are hereby amended.

Section 707.01 of the Welfare and Institutions Code is amended to read:

707.01. (a) If a minor ~~is found an unfit subject to be dealt with under the juvenile court law~~ is transferred to adult court pursuant to Section 707, then the following shall apply:

(1) The jurisdiction of the juvenile court with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that did not result in the minor's commitment to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities ~~Youth Authority~~ shall not terminate, unless a hearing is held pursuant to Section 785 and the jurisdiction of the juvenile court over the minor is terminated.

(2) The jurisdiction of the juvenile court and the ~~Youth Authority~~ Division of Juvenile Facilities with respect to any previous adjudication resulting in the minor being made a ward of the juvenile court that resulted in the minor's commitment to the ~~Youth Authority~~ Division of Juvenile Facilities shall not terminate.

~~(3) All petitions pending against the minor shall be transferred to the court of criminal jurisdiction where one of the following applies:~~

~~(A) Jeopardy has not attached and the minor was 16 years of age or older at the time he or she is alleged to have violated the criminal statute or ordinance.~~

~~(B) Jeopardy has not attached and the minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(4)~~(3) All petitions pending against the minor in juvenile court shall be disposed of ~~in the juvenile court~~ pursuant to the juvenile court law~~.~~ ~~, where one of the following applies:~~

~~(A) Jeopardy has attached.~~

~~(B) The minor was under 16 years of age at the time he or she is alleged to have violated a criminal statute for which he or she may not be presumed or may not be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(5) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:~~

~~(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.~~

~~(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(6) Subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, which finding was based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, and the minor was not convicted of the offense, a new petition or petitions alleging the violation of any law or ordinance defining crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness need not be filed in the juvenile court if one of the following applies:~~

~~(A) The minor was 16 years of age or older at the time he or she is alleged to have violated a criminal statute or ordinance.~~

~~(B) The minor is alleged to have violated a criminal statute for which he or she may be presumed or may be found to be not a fit and proper subject to be dealt with under the juvenile court law.~~

~~(7) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is not convicted of the violations which were the subject of the proceeding that resulted in a finding of unfitness and the finding of unfitness was not based solely on either or both the minor's previous delinquent history or a lack of success of previous attempts by the juvenile court to rehabilitate the minor, a new petition or petitions alleging the violation of any law or ordinance defining a crime which would otherwise cause the minor to be a person described in Section 602 committed by the minor prior to or after the finding of unfitness shall be first filed in the juvenile court. This paragraph does not preclude the prosecuting attorney from seeking to find the minor unfit in a subsequent petition.~~

~~(b) As to a violation referred to in paragraph (5) or (6) of subdivision (a), if a petition based on those violations has already been filed in the juvenile court, it shall be transferred to the court of criminal jurisdiction without any further proceedings.~~

~~(c) The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for any charge specified in paragraph (5) or (6) of subdivision (a) which is refiled in the juvenile court.~~

~~(d)~~(b) This section shall not be construed to affect the right to appellate review of ~~a finding of unfitness~~ an order to transfer or the duration of the jurisdiction of the juvenile court as specified in Section 607.

Section 707.1 of the Welfare and Institutions Code is amended to read:

707.1. (a) If the minor is ~~declared not a fit and proper subject to be dealt with under the juvenile court law,~~ transferred under juvenile court law to a court of criminal jurisdiction, ~~or as to a minor for whom charges in a petition or petitions in the juvenile court have been transferred to a court of criminal jurisdiction pursuant to Section 707.01,~~ the district attorney, or other appropriate prosecuting officer may file an accusatory pleading against the minor in a court of criminal jurisdiction. The case shall proceed from that point according to the laws applicable to a criminal case. If a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are being held, it shall be ordered that the proceedings upon that prosecution shall resume.

(b)(1) The juvenile court, as to a minor alleged to have committed an offense described in ~~subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 and~~ subdivision (b), of Section 602 and whose case has been transferred under juvenile court law to a court of criminal jurisdiction, ~~who has been declared not a fit and proper subject to be dealt with under the juvenile court law, or as to a minor for whom charges in a petition or petitions in the juvenile court will be transferred to a court of criminal jurisdiction pursuant to Section 707.01, or as to a minor whose case has been filed directly in or transferred to a court of criminal jurisdiction pursuant to Section 707.01,~~ may order the minor to be delivered to the custody of the sheriff upon a finding that the presence of the minor in the juvenile hall would endanger the safety of the public or be detrimental to the other inmates detained in the juvenile hall. Other minors whose cases have been transferred under juvenile court law to a court of criminal jurisdiction, ~~declared not fit and proper subjects to be dealt with under the juvenile court law,~~ if detained, shall remain in the juvenile hall pending final disposition by the criminal court or until they attain the age of 18, whichever occurs first.

(2) Upon attainment of the age of 18 years such a person who is detained in juvenile hall shall be delivered to the custody of the sheriff unless the court finds that it is in the best interests of the person and the public that he or she be retained in juvenile hall. If a hearing is requested by the person, the transfer to the custody of the sheriff shall not take place until after the court has made its findings.

(3) When a person under 18 years of age is detained pursuant to this section in a facility in which adults are confined the detention shall be in accordance with the conditions specified in subdivision (b) of Section 207.1.

(4) A minor ~~found not a fit and proper subject to be dealt with under the juvenile court law~~ whose case has been transferred under juvenile court law to a court of criminal jurisdiction shall, upon the conclusion of the ~~fitness~~ transfer hearing, be entitled to release on bail or on his or her own recognizance ~~on~~ under the same circumstances, terms, and conditions as an adult alleged to have committed the same offense.

Section 707.2 of the Welfare and Institutions Code is amended to read:

707.2. (a) Prior to sentence and after considering a recommendation on the issue which shall be made by the probation department, the court of criminal jurisdiction may remand the minor to the custody of the ~~Department of the Youth Authority~~ Division of Juvenile Facilities for a period not to exceed 90 days for the purpose of evaluation and report concerning his or her amenability to training and treatment offered by the Department of ~~the Youth Authority~~ Juvenile Facilities. If the court decides not to remand the minor to the custody of the ~~Department of the Youth Authority~~ Division of Juvenile Facilities, the court shall make a finding on the record that the amenability evaluation is not necessary. ~~However, a court of criminal jurisdiction shall not sentence any minor who was under the age of 16 years when he or she committed any criminal offense to the state prison unless he or she has first been remanded to the custody of the Department of the Youth Authority for evaluation and report pursuant to this section.~~

The need to protect society, the nature and seriousness of the offense, the interests of justice, and the needs of the minor shall be the primary considerations in the court's determination of the appropriate disposition for the minor.

(b) This section shall not apply where commitment to the ~~Department of the Youth Authority~~ Division of Juvenile Facilities is prohibited pursuant to Section 1732.6.

Section 1732.6 of the Welfare and Institutions Code is amended to read:

1732.6. ~~(a)~~ No minor shall be committed to the ~~Youth Authority~~ Division of Juvenile Facilities when he or she is convicted in a criminal action ~~for an offense described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 of the Penal Code~~ and is sentenced to incarceration for life, an indeterminate period to life, or a determinate period of years such that the maximum number of years of actual ~~potential~~ confinement when added to the minor's age would exceed 25 years. ~~Except as specified in subdivision (b),~~ In all other cases in which the minor has been convicted in a criminal action, the court shall retain discretion to sentence the minor to the Department of Corrections or to commit the minor to the ~~Youth Authority~~ Division of Juvenile Facilities.

~~(b) No minor youth shall be committed to the Youth Authority when he or she is convicted in a criminal action for:~~

~~(1) An offense described in subdivision (b) of Section 602, or~~

~~(2) An offense described in paragraphs (1), (2), or (3) of subdivision (d) of Section 707, if the circumstances enumerated in those paragraphs are found to be true by the trier of fact.~~

~~(3) An offense described in subdivision (b) of Section 707, if the minor had attained the age of 16 years of age or older at the time of commission of the offense.~~

~~(c) Notwithstanding any other provision of law, no person under the age of 16 years shall be housed in any facility under the jurisdiction of the Department of Corrections.~~

Section 1170.19 of the Penal Code is amended to read:

1170.19. (a) Notwithstanding any other provision of law, the following shall apply to a person sentenced pursuant to Section 1170.17.

(1) The person may be committed to the ~~Youth Authority~~ Division of Juvenile Facilities only to the extent the person meets the eligibility criteria set forth in Section 1732.6 of the Welfare and Institutions Code.

~~(2) The person shall not be housed in any facility under the jurisdiction of the Department of Corrections, if the person is under the age of 16 years.~~

(2)~~(3)~~ The person shall have his or her criminal court records accorded the same degree of public access as the records pertaining to the conviction of an adult for the identical offense.

(3)~~(4) Subject to the knowing and intelligent consent of both the prosecution and the person being sentenced pursuant to this section, the~~ The court may order a juvenile disposition under the juvenile court law, in lieu of ~~a~~ an adult sentence ~~under this code~~, upon a finding that such an order would serve the best interests of justice, protection of the community, and the person being sentenced. Prior to ordering a juvenile disposition, the court shall cause to be received into evidence a social study by the probation officer, prepared pursuant to Section 706 of the Welfare and Institutions Code, and shall state that the social study made by the probation officer has been read and considered by the court.

(b) Notwithstanding any other provision of law, the following shall apply to a person who is eligible to receive a juvenile disposition pursuant to Section 1170.17.

(1) The person shall be entitled a hearing on the proper disposition of the case, conducted in accordance with the provisions of Section 706 of the Welfare and Institutions Code. The court in which the conviction occurred shall ~~order the probation department to prepare a written social study and recommendation concerning the proper disposition of the case, prior to conducting the hearing or~~ remand the matter to the juvenile court for purposes of preparing the social study, conducting the disposition hearing pursuant to Section 706 of the Welfare and Institutions Code, and making a disposition order under the juvenile court law.

(2) The person shall have his or her conviction deemed to be a ~~finding of delinquency wardship~~ true petition and the person declared to be a ward under Section 602 of the Welfare and Institutions Code.

(3) The person shall have his or her criminal court records accorded the same degree of confidentiality as if the matter had been initially prosecuted as a delinquency petition in the juvenile court.

~~(4) Subject to the knowing and intelligent consent of both the prosecution and the person being sentenced pursuant to this section, the court may impose an adult sentence under this code, in~~

~~lieu of ordering a juvenile disposition under the juvenile court law, upon a finding that such an order would serve the best interests of justice, protection of the community, and the person being sentenced. Prior to ordering an adult sentence, the court shall cause to be received into evidence a social study by the probation officer, prepared pursuant to Section 706 of the Welfare and Institutions Code, and shall state that the social study prepared by the probation officer has been read and considered by the court.~~

SEC. 7. Juvenile Court Records.

Section 781 of the Welfare and Institutions Code is amended to read:

781. (a)(1)(A) In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or in any case in which a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, in a case in which no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case, at any time after the person has reached 18 years of age, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, entities, and public officials as the petitioner alleges, in his or her petition, to have custody of the records. The court shall notify the district attorney of the county and the county probation officer, if he or she is not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and any other records relating to the case in the custody of the other agencies, entities and officials as are named in the order. Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.

(B) The court shall send a copy of the order to each agency, entity and official named in the order, directing the agency to seal its records. Each agency, entity and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that the agency, entity, or official received.

(C) In any case in which a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal Code, a court, in ordering the sealing of the juvenile records of the person, shall also provide in the order that the person is relieved from the registration

requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies, entities, and officials.

~~(D) Notwithstanding any other law, the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b) of Section 707 when he or she had attained 14 years of age or older.~~

(2) An unfulfilled order of restitution that has been converted to a civil judgment pursuant to Section 730.6 shall not be a bar to sealing a record pursuant to this subdivision.

(3) Outstanding restitution fines and court-ordered fees shall not be considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and shall not be a bar to sealing a record pursuant to this subdivision.

(4) The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may order the inspection of the records. Except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(c)(1) Subdivision (a) does not apply to Department of Motor Vehicle records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

(2) Notwithstanding any other provision of law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requestor code numbers by the department. Any insurer to which such a record of conviction is disclosed, when such a conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(3) This subdivision does not prevent the sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(4) This subdivision does not affect the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches 38 years of age if the person was alleged or adjudged to be a person described by Section 602, ~~except that if the subject of the record was found to be a person described in Section 602 because of the commission of an offense listed in subdivision (b) of Section 707 when he or she was 14 years of age or older, the record shall not be destroyed~~. Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.

(e) The court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity.

~~(f) This section shall not permit the sealing of a person's juvenile court records for an offense where the person is convicted of that offense in a criminal court pursuant to the provisions of Section 707.1. This subdivision is declaratory of existing law.~~

~~(g)~~(f)(1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution obtained pursuant to Section 730.6. A minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

(2) A victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. The juvenile court shall have access to any records sealed pursuant to this section for the limited purposes of enforcing a civil judgment or restitution order.

~~(h)~~(g)(1) On and after January 1, 2015, each court and probation department shall ensure that information regarding the eligibility for and the procedures to request the sealing and destruction of records pursuant to this section shall be provided to each person who is either of the following:

(A) A person for whom a petition has been filed on or after January 1, 2015, to adjudge the person a ward of the juvenile court.

(B) A person who is brought before a probation officer pursuant to Section 626.

(2) The Judicial Council shall, on or before January 1, 2015, develop informational materials for purposes of paragraph (1) and shall develop a form to petition the court for the sealing and destruction of records pursuant to this section. The informational materials and the form shall be provided to each person described in paragraph (1) when jurisdiction is terminated or when the case is dismissed.

SEC. 8. Parole Hearings.

Section 3051 of the Penal Code is amended to read:

(a)(1) A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 23 years of age at the time of his or her controlling offense.

(2) For the purposes of this section, the following definitions shall apply:

(A) "Incarceration" means detention in a city or county jail, a local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.

(B) "Controlling offense" means the offense ~~or enhancement~~ for which any sentencing court imposed the longest term of imprisonment.

(b)(1) A person who was convicted of a controlling offense that was committed before the person had attained 23 years of age and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing by the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions.

(2) A person who was convicted of a controlling offense that was committed before the person had attained 23 years of age and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(3) A person who was convicted of a controlling offense that was committed before the person had attained 23 years of age and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(c) An individual subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041.

(d) The board shall conduct a youth offender parole hearing to consider release. At the youth offender parole hearing, the board shall release the individual on parole as provided in Section 3041, except that the board shall act in accordance with subdivision (c) of Section 4801.

(e) The youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. The board shall review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.

(f)(1) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.

(2) Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or her growth and maturity since the time of the crime may submit statements for review by the board.

(3) Nothing in this section is intended to alter the rights of victims at parole hearings.

(g) If parole is not granted, the board shall set the time for a subsequent youth offender parole hearing in accordance with paragraph (3) of subdivision (b) of Section 3041.5. In exercising its discretion pursuant to paragraph (4) of subdivision (b) and subdivision (d) of Section 3041.5, the board shall consider the factors in subdivision (c) of Section 4801. No subsequent youth offender parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(h) This section shall not apply to cases in which sentencing occurs pursuant to ~~Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or~~ Section 667.61, or in which an individual was sentenced to life in prison without the possibility of parole. This section shall not apply to an individual to whom this section would otherwise apply, but who, subsequent to attaining 23 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.

(i)(1) The board shall complete all youth offender parole hearings for individuals who became entitled to have their parole suitability considered at a youth offender parole hearing prior to the effective date of the act that added paragraph (2) by July 1, 2015.

(2)(A) The board shall complete all youth offender parole hearings for individuals who were sentenced to indeterminate life terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by July 1, 2017.

(B) The board shall complete all youth offender parole hearings for individuals who were sentenced to determinate terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by July 1, 2021. The board shall, for all individuals described in this subparagraph, conduct the consultation described in subdivision (a) of Section 3041 before July 1, 2017.

SEC. 9. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a statute that is passed by a two-thirds vote of the members of each house of the Legislature and presented to the Governor, so long as such amendments are consistent with and further the intent of this Act. The provisions of this measure may be amended to further

reduce the number or categories of youth transferred to the adult system or otherwise incarcerated by a statute that is passed by a majority vote of the members of each house of the Legislature and presented to the Governor.

SEC. 10. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 11. Conflicting Initiatives.

(a) In the event that this measure and another measure on the same subject matter, including but not limited to criminal justice and rehabilitation, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 12. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, and on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 13. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Public Safety and Rehabilitation Act of 2016."

SEC. 2. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to:

1. Protect and enhance public safety.
2. Save money by reducing wasteful spending on prisons.
3. Prevent federal courts from indiscriminately releasing prisoners.
4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.
5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

SEC. 3. Section 32 is added to Article I of the California Constitution, to read:

SEC. 32. (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:

(1) Parole consideration: Any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

SEC. 4. Judicial Transfer Process.

Sections 602 and 707 of the Welfare and Institutions Code are hereby amended.

Section 602 of the Welfare and Institutions Code is amended to read:

602. ~~(a)~~ Except as provided in ~~subdivision (b)~~ Section 707, any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based

solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

~~(b) Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction:~~

~~(1) Murder, as described in Section 187 of the Penal Code, if one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is alleged by the prosecutor, and the prosecutor alleges that the minor personally killed the victim.~~

~~(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:~~

~~(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.~~

~~(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.~~

~~(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.~~

~~(D) Forcible lewd and lascivious acts on a child under 14 years of age, as described in subdivision (b) of Section 288 of the Penal Code.~~

~~(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.~~

~~(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

~~(G) Lewd and lascivious acts on a child under 14 years of age, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (d) of Section 1203.066 of the Penal Code.~~

Section 707 of the Welfare and Institutions Code is amended to read:

707. (a)(1) In any case in which a minor is alleged to be a person described in ~~subdivision (a) of~~ Section 602 by reason of the violation, when he or she was 16 years of age or older, of any felony criminal statute, ~~or ordinance except those listed in subdivision (b)~~, or of an offense listed in subdivision (b) when he or she was 14 or 15 years of age, the District Attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. ~~upon~~ The motion ~~of the petitioner~~ must be made prior to the attachment of jeopardy. Upon such motion, the juvenile court shall ~~cause~~ order the probation officer to ~~investigate and~~ submit a report on the behavioral patterns and social history of the minor~~, being considered for a determination of unfitness.~~ The report shall include any written or oral statement offered by the victim pursuant to Section 656.2.

(2) Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court shall decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E) below. If the court orders a transfer of jurisdiction, the court shall recite the basis for its decision in an order entered upon the minutes. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no plea that may have been entered already shall constitute evidence at the hearing. ~~may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive:~~

(A)(i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B)(i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C)(i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D)(i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E)(i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

~~A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.~~

~~(2)(A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:~~

~~(i) The minor has previously been found to have committed two or more felony offenses.~~

~~(ii) The offenses upon which the prior petition or petitions were based were committed when the minor had attained 14 years of age.~~

~~(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive:~~

~~(i)(I) The degree of criminal sophistication exhibited by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(ii)(I) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(iii)(I) The minor's previous delinquent history.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous~~

~~delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(iv)(I) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(v)(I) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subclause (I) of clauses (i) to (v), inclusive, and findings therefore recited in the order as to each of the those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of those criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea that may have been entered already shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

(b) Subdivision ~~(c)~~ (a) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses when he or she was 14 or 15 years of age:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) An offense described in Section 1203.09 of the Penal Code.

(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(19) A felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(27) Kidnapping as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(29) The offense described in Section 18745 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

~~(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive:~~

~~(1)(A) The degree of criminal sophistication exhibited by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(2)(A) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(3)(A) The minor's previous delinquent history.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(4)(A) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(5)(A) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subparagraph (A) of paragraphs (1) to (5), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of those criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).~~

~~(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:~~

~~(A) The minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in the state prison for life.~~

~~(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 or 12022.53 of the Penal Code.~~

~~(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:~~

~~(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).~~

~~(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in criminal conduct by gang members.~~

~~(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one or more of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of a felony offense, when he or she was 14 years of age or older:~~

~~(A) A felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(B) A felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.~~

~~(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.~~

~~(5) For an offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(e) A report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.~~

SEC. 5. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of Section 4 of this measure may be amended so long as such amendments are consistent with and further the intent of this Act by a statute that is passed by a majority vote of the members of each house of the Legislature and signed by the Governor.

SEC. 6. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 7. Conflicting Initiatives.

(a) In the event that this measure and another measure addressing credits and parole eligibility for state prisoners or adult court prosecution for juvenile defendants shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 8. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in any trial court, on appeal, or on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 9. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On February 25, 2016, I served a true copy of the following document(s):

Emergency Petition for Writ of Mandate and Request for Immediate Stay and/or Other Appropriate Relief; Memorandum of Points and Authorities

on the following party(ies) in said action:

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Clerk to the
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(By Overnight Mail)

☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

☒ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

☒ **BY EMAIL TRANSMISSION**: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on February 25, 2016, in San Leandro, California.

Nina Leathley

(00268671-10)