

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

IN RE GERALD KOWALCZYK,

On Habeas Corpus

No. S277910

First District Court of Appeal
No. A162977

San Mateo Co. Sup. Ct. No.
21-SF-003700-A

**ORANGE COUNTY PUBLIC DEFENDER'S OFFICE
APPLICATION AND BRIEF OF AMICUS CURIAE IN
SUPPORT OF PETITIONER AND EXHIBIT A**

MARTIN F. SCHWARZ
Public Defender
State Bar No. 184062

LAURA JOSE
Chief Deputy Public Defender

ADAM Vining
Assistant Public Defender
State Bar No. 233702

*ALEXANDER BARTEL
Deputy Public Defender
State Bar No. 307526

801 Civic Center Dr., Suite 400
Santa Ana, California 92701
(657) 251- 6090

Attorneys for Amicus Curiae, Orange County Public
Defender's Office, in support of Petitioner

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**BRIEF OF AMICUS CURIAE
IN SUPPORT OF PETITIONER**

The Orange County Public Defender's Office, by and through counsel, Martin F. Schwarz, hereby respectfully submits this Brief of Amicus Curiae in Support of Petitioner.

Application

The Orange County Public Defender's Office is a public agency charged with the legal representation of indigent defendants in California's third most populous county. Our office consists of approximately 200 attorneys dedicated to the vigorous representation of criminal defendants in the Superior Court, Courts of Appeal, and California Supreme Court. The Public

Defender conducts the vast majority of arraignments and bail hearings in Orange County on behalf of criminal defendants. The indigent defendants in Orange County are disproportionately impacted by pre-trial detention orders.

Issues

In granting review of the Court of Appeal's decision in *In re Kowalczyk* (2022) 85 Cal.App.5th 650, this Court defined the issues as:

- I. Which constitutional provision governs the denial of bail in noncapital cases—article I, section 12, subdivisions (b) and (c), or article I, section 28, subdivision (f)(3), of the California Constitution—or, in the alternative, can these provisions be reconciled?
- II. May a superior court ever set pretrial bail above an arrestee's ability to pay?

Arguments Presented

- I. **Only Section 12 of Article I Governs the Denial of Bail in Noncapital Cases**

Memorandum of Points and Authorities

I. Only Section 12 of Article I Governs the Denial of Bail in Noncapital Cases.

Only Section 12 of Article I of the California Constitution governs when bail can be denied in a noncapital case. While the court of appeal in *In re Kowalczyk* (2022) 85 Cal.App.5th 650 (*Kowalczyk*), ruled that Section 28(f)(3) could be reconciled with Section 12, it should have found that Section 28(f)(3) is not operative at all. This conclusion is drawn from this Supreme Court's own precedent as it relates to competing ballot measures.

The seminal case on competing ballot measures involving Sections 12 and 28 is *People v. Standish* (2006) 38 Cal.4th 858 (*Standish*). In that case, this Supreme Court first faced the issue of whether section 28's bail provision, enacted through Proposition 8, which proposed to repeal Section 12 of the California Constitution, permitted the denial of an OR release for a defendant upon the lapsing of the 10-day time period in Penal Code section 859b. This high court held it did not. In reaching this conclusion, the Court noted that Proposition 4, a ballot measure on the same ballot which garnered more votes, added language to Section 12 on the subject of bail. (*Id.* at pp. 874-875.)

When this Supreme Court in *Standish*, *supra*, 38 Cal.4th 858 engaged in its analysis in determining whether Proposition 4 trumped Proposition 8, it made clear that its analysis was preconditioned on the fact that Propositions 4 and 8 were competing provisions and both could not be given effect. (*Id.* at pp.

876-877.) The Court further noted the proponents of each proposition were at odds with one another. (*Id.* at pp. 877.) The Court then engaged in a “section-by-section comparison” of each proposition and determined that, given several portions directly conflicted with one another, they were competing resolutions and, because Proposition 4 received more votes, it thereby prevailed. (*Id.* at pp. 877-878.)

Proposition 9 was later enacted, modifying Section 28 but not in a manner which amended the bail provision previously rendered inoperative by the Court’s ruling in *Standish*. But Proposition 9 is not the same measure as Proposition 8 and its later enactment does not repeal section 12. The reasons are numerous.

First, Proposition 8 explicitly sought to repeal Section 12. (*Standish, supra*, 38 Cal.4th at p. 877 citing Ballot Pamp., Primary Elec. (June 8, 1982) text of Prop. 8, p. 33.) Proposition 9 did not. In fact, Proposition 9 in no way proposed an intent to abrogate a defendant’s right to bail under Section 12. Instead, it proposed giving victims of crimes a greater voice when a judge considers releasing a defendant pending trial. (Exhibit A at p. 003.)

The only portion of Section 28 which is in conflict with Section 12 was passed with Proposition 8. But, as this Supreme Court ruled, while Proposition 8 passed, Proposition 4 passed with greater votes and, thus, trumped Proposition 8 in respect to bail. (*Standish, supra*, 38 Cal.4th at p. 876.) In fact, when Proposition 9 added language which created a victim’s right to be heard and their safety to be considered when setting bail, it eliminated the portion which stated that individuals accused of serious felonies

may not be released on their own recognizance, causing it to be more similar to Section 12. (Exhibit A at p. 010.) Proposition 9 did not act to further enforce Proposition 8 in regards to the right to bail. Instead, it amended Section 28 to give victims a right to be heard.

Further, Proposition 9 was not a competing initiative with Proposition 4, as they were not on the same ballot. “California Constitution, article II, section 10, subdivision (b) (hereafter section 10(b)), provides: ‘If provisions of two or more measures **approved at the same election** conflict, those of the measure receiving the highest affirmative vote shall prevail.’” (*Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 987 (*Yoshisato*) [Emphasis added].) Assuming this Court were to engage in the analysis expressed in *Standish*, the provisions Proposition 9 added are complementary or supplementary to Section 12 because they only added that victims have a right to be heard and have their safety considered. In fact, Proposition 9 removed a portion of Section 28 that was contrary to Section 12, to wit, that a judge did not have discretion to release someone charged with a serious felony on their own recognizance.

In the case of complementary or supplementary initiatives (which amici does not necessarily concede they are) “the two measures may be compared section by section, giving effect to both so long as there is no direct conflict.” (*Standish, supra*, 38 Cal.4th at p. 876 citing *Yoshisato, supra*, 2 Cal.4th at pp. 991-992.) If this Court engages in this analysis, both the amendments proposed by

Proposition 9 and Section 12 can be easily harmonized.

Accordingly, Proposition 9 did not repeal Section 12.

The relevant portion of section 28 already existed and had been determined to be trumped by Proposition 4 in *Standish*. There is no authority holding that by amending section 28 in other respects, the voters intended to thereby overrule *Standish*'s explicit holding. If Proposition 9 indeed caused Proposition 8 to retroactively trump Proposition 4, this Supreme Court would presumably have stated *In re Humphrey* (2021) 11 Cal.5th 135 that *Standish* was no longer good law. Proposition 9 is not a reimplementation of Proposition 8's bail scheme. Proposition 9 added provisions to Section 28, but the contrary portions were created by Proposition 8 and had already been trumped by Proposition 4.

To hold otherwise leads to an absurd result whereby voters for Proposition 9 who supported the amendments provided in the Voter Information Guide would have, completely unbeknownst to them, also be voting to undo Proposition 4. This position sets a dangerous precedent where supporters of initiatives could deceive voters into undoing prior voting initiatives voters supported through circuitous means to achieve their ends. This would also mean that provisions from initiatives which were deemed inoperative would be lying in wait until even a mere word is added to the existing provision which would then, without warning, revive the provision in its entirety. This is the purpose of issues being presented "as 'competing' or 'alternative' measures" else courts are put in the position of amalgamating "a regulatory

scheme created without any basis for ascertaining whether the electorate understood or intended the result.’” (*Yoshisato, supra*, 2 Cal.4th at pp. 987-988, quoting *Taxpayers To Limit Campaign Spending v. Fair Pol. Practices Comm.* (1990) 51 Cal.3d 744, 747.)

When “it is clear that the voters intended merely to amend [a statute]” this Supreme Court concluded “the technical (and indeed, constitutionally compelled) reenactment of a statute that is amended by the voters does not, in and of itself, reflect intent of the voters to adopt a ‘comprehensive scheme’ that would prevail over all other provisions of any other measure by a lesser affirmative vote at the same election.” (*Yoshisato, supra*, 2 Cal.4th at p. 990.) It stands to reason that the same logic applies when a measure that merely proposes minor amendments cannot reflect an intent to upend an entirely separate section which is not mentioned once in the voter information. Thus, a court is tasked with only considering “the amendments enacted by the two measures” and nothing more. (*Id.* at p. 991.)

Accordingly, the court in *Kowalczyk* was incorrect in holding that Section 28(f)(3) is operative. That portion of Section 28(f)(3) has not been addressed by voters since *Standish* and, accordingly, Section 12 continues to be the effective bail provision. However, if this Supreme Court disagrees with amici, then this Court should rule as the court in *Kowalczyk* and find the sections can be reconciled.

Conclusion

The California Constitution Article I Section 12 guarantees the right to bail absent circumstances expressly provided in that section. Given that the Supreme Court in *Humphrey* did not expressly eliminate Section 12, this Court should find that all defendants charged with noncapital offenses which do not fall under subdivision (b) or (c) are entitled to bail.

Dated: December 4, 2023

Respectfully Submitted,
MARTIN F. SCHWARZ
Public Defender
LAURA JOSE
Chief Deputy Public Defender
ADAM Vining
Assistant Public Defender

Alexander Bar tel

ALEXANDER BARTEL
Deputy Public Defender

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief has been prepared using 13 point Century Schoolbook typeface. The text of the Brief of Amicus Curiae consists of 2,146 words as counted by Microsoft Word version 2021 word processing program, up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance and correct and that this declaration was executed on December 4, 2023.

Alexander Bartel

ALEXANDER BARTEL
Deputy Public Defender

DECLARATION OF SERVICE

In re Gerald Kowalczyk— Supreme Court Case No. S277910:

Elizabeth McAloney declares that she is a citizen of the United States, a resident of Orange County, over the age of 18 years, not a party to the above-entitled action and has a business address at 801 W. Civic Center Dr., Suite 400, Santa Ana, California 92701.

That on the 4th day of December 2023, I served a copy of the APPLICATION AND BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER AND EXHIBIT A in the above-entitled action I served to all listed interested parties electronically via TrueFiling.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 4th day of December, 2023, at Santa Ana, California.

Elizabeth McAloney
Elizabeth McAloney

EXHIBIT A
(VOTER GUIDE 2008: PROPOSITION 9)

**CRIMINAL JUSTICE SYSTEM. VICTIMS' RIGHTS. PAROLE.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

- Requires notification to victim and opportunity for input during phases of criminal justice process, including bail, pleas, sentencing and parole.
- Establishes victim safety as consideration in determining bail or release on parole.
- Increases the number of people permitted to attend and testify on behalf of victims at parole hearings.
- Reduces the number of parole hearings to which prisoners are entitled.
- Requires that victims receive written notification of their constitutional rights.
- Establishes timelines and procedures concerning parole revocation hearings.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Potential loss of future state savings on prison operations and potential increased county jail operating costs that could collectively amount to hundreds of millions of dollars annually, due to restricting the early release of inmates to reduce facility overcrowding.
- Net savings in the low tens of millions of dollars annually for the administration of parole hearings and revocations, unless the changes in parole revocation procedures were found to conflict with federal legal requirements.

ANALYSIS BY THE LEGISLATIVE ANALYST**OVERVIEW OF PROPOSAL**

This measure amends the State Constitution and various state laws to (1) expand the legal rights of crime victims and the payment of restitution by criminal offenders, (2) restrict the early release of inmates, and (3) change the procedures for granting and revoking parole. These changes are discussed in more detail below.

EXPANSION OF THE LEGAL RIGHTS OF CRIME VICTIMS AND RESTITUTION**Background**

In June 1982, California voters approved Proposition 8, known as the "Victims' Bill of Rights." Among other changes, the proposition amended the Constitution and various state laws to grant crime victims the right to be notified of, to attend, and to state their views at, sentencing and parole hearings. Other separately enacted laws have created other rights for crime victims, including the opportunity for a victim to obtain a judicial order of protection from harassment by a criminal defendant.

Proposition 8 established the right of crime victims to obtain restitution from any person who committed the crime that caused them to suffer a loss. Restitution

often involves replacement of stolen or damaged property or reimbursement of costs that the victim incurred as a result of the crime. A court is required under current state law to order full restitution unless it finds compelling and extraordinary reasons not to do so. Sometimes, however, judges do not order restitution. Proposition 8 also established a right to "safe, secure and peaceful" schools for students and staff of primary, elementary, junior high, and senior high schools.

Changes Made by This Measure

Restitution. This measure requires that, without exception, restitution be ordered from offenders who have been convicted, in every case in which a victim suffers a loss. The measure also requires that any funds collected by a court or law enforcement agencies from a person ordered to pay restitution would go to pay that restitution first, in effect prioritizing those payments over other fines and obligations an offender may legally owe.

Notification and Participation of Victims in Criminal Justice Proceedings. As noted above, Proposition 8 established a legal right for crime victims to be notified of, to attend, and to state their views at, sentencing and parole hearings. This measure expands these legal rights to include all public criminal

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

proceedings, including the release from custody of offenders after their arrest, but before trial. In addition, victims would be given the constitutional right to participate in other aspects of the criminal justice process, such as conferring with prosecutors on the charges filed. Also, law enforcement and criminal prosecution agencies would be required to provide victims with specified information, including details on victim's rights.

Other Expansions of Victims' Legal Rights. This measure expands the legal rights of crime victims in various other ways, including the following:

- Crime victims and their families would have a state constitutional right to (1) prevent the release of certain of their confidential information or records to criminal defendants, (2) refuse to be interviewed or provide pretrial testimony or other evidence requested in behalf of a criminal defendant, (3) protection from harm from individuals accused of committing crimes against them, (4) the return of property no longer needed as evidence in criminal proceedings, and (5) "finality" in criminal proceedings in which they are involved. Some of these rights now exist in statute.
- The Constitution would be changed to specify that the safety of a crime victim must be taken into consideration by judges in setting bail for persons arrested for crimes.
- The measure would state that the right to safe schools includes community colleges, colleges, and universities.

RESTRICTIONS ON EARLY RELEASE OF INMATES

Background

The state operates 33 state prisons and other facilities that had a combined adult inmate population of about 171,000 as of May 2008. The costs to operate the California Department of Corrections and Rehabilitation (CDCR) in 2008–09 are estimated to be approximately \$10 billion. The average annual cost to incarcerate an inmate is estimated to be about \$46,000. The state prison system is currently experiencing overcrowding because there are not enough permanent beds available for all inmates. As a result, gymnasiums and other rooms in state prisons have been converted to house some inmates.

Both the state Legislature and the courts have been considering various proposals that would reduce

overcrowding, including the early release of inmates from state prison. At the time this analysis was prepared, none of these proposals had been adopted. State prison populations are also affected by credits granted to prisoners. These credits, which can be awarded for good behavior or participation in specific programs, reduce the amount of time a prisoner must serve before release.

Collectively, the state's 58 counties spend over \$2.4 billion on county jails, which have a population in excess of 80,000. There are currently 20 counties where an inmate population cap has been imposed by the federal courts and an additional 12 counties with a self-imposed population cap. In counties with such population caps, inmates are sometimes released early to comply with the limit imposed by the cap. However, some sheriffs also use alternative methods of reducing jail populations, such as confining inmates to home detention with Global Positioning System (GPS) devices.

Changes Made by This Measure

This measure amends the Constitution to require that criminal sentences imposed by the courts be carried out in compliance with the courts' sentencing orders and that such sentences shall not be "substantially diminished" by early release policies to alleviate overcrowding in prison or jail facilities. The measure directs that sufficient funding be provided by the Legislature or county boards of supervisors to house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

CHANGES AFFECTING THE GRANTING AND REVOCATION OF PAROLE

Background

The Board of Parole Hearings conducts two different types of proceedings relating to parole. First, before CDCR releases an individual who has been sentenced to life in prison with the possibility of parole, the inmate must go before the board for a parole consideration hearing. Second, the board has authority to return to state prison for up to a year an individual who has been released on parole but who subsequently commits a parole violation. (Such a process is referred to as parole revocation.) A federal court order requires the state to provide legal counsel to parolees, including assistance at hearings related to parole revocation charges.

Changes Made by This Measure

Parole Consideration Procedures for Lifers. This measure changes the procedures to be followed by the board when it considers the release from prison of inmates with a life sentence. Specifically:

- Currently, individuals whom the board does not release following their parole consideration hearing must generally wait between one and five years for another parole consideration hearing. This measure would extend the time before the next hearing to between 3 and 15 years, as determined by the board. However, inmates would be able to periodically request that the board advance the hearing date.
- Crime victims would be eligible to receive earlier notification in advance of parole consideration hearings. They would receive 90 days advance notice, instead of the current 30 days.
- Currently, victims are able to attend and testify at parole consideration hearings with either their next of kin and up to two members of their immediate family, or two representatives. The measure would remove the limit on the number of family members who could attend and testify at the hearing, and would allow victim representatives to attend and testify at the hearing without regard to whether members of the victim's family were present.
- Those in attendance at parole consideration hearings would be eligible to receive a transcript of the proceedings.

General Parole Revocation Procedures. This measure changes the board's parole revocation procedures for offenders after they have been paroled from prison. Under a federal court order in a case known as *Valdivia v. Schwarzenegger*, parolees are entitled to a hearing within 10 business days after being charged with violation of their parole to determine if there is probable cause to detain them until their revocation charges are resolved. The measure extends the deadline for this hearing to 15 days. The same court order also requires that parolees arrested for parole violations have a hearing to resolve the revocation charges within 35 days. This measure extends this timeline to 45 days. The measure also provides for the appointment of legal counsel to parolees facing revocation charges only if the board determines, on a case-by-case basis, that the parolee

is indigent and that, because of the complexity of the matter or because of the parolee's mental or educational incapacity, the parolee appears incapable of speaking effectively in his or her defense. Because this measure does not provide for counsel at all parole revocation hearings, and because the measure does not provide counsel for parolees who are not indigent, it may conflict with the *Valdivia* court order, which requires that all parolees be provided legal counsel.

FISCAL EFFECTS

Our analysis indicates that the measure would result in: (1) state and county fiscal impacts due to restrictions on early release, (2) potential net state savings from changes in parole board procedures, and (3) changes in restitution funding and other fiscal impacts. The fiscal estimates discussed below could change due to pending federal court litigation or budget actions.

State and County Fiscal Impacts of Early Release Restrictions

As noted above, this measure requires that criminal sentences imposed by the courts be carried out without being substantially reduced by early releases in order to address overcrowding. This provision could have a significant fiscal impact on both the state and counties depending upon the circumstances related to early release and how this provision is interpreted by the courts.

State Prison. The state does not now generally release inmates early from prison. Thus, under current law, the measure would probably have no fiscal effect on the state prison system. However, the measure could have a significant fiscal effect in the future in the event that it prevented the Legislature or the voters from enacting a statutory early release program to address prison overcrowding problems. Under such circumstances, this provision of the measure could prevent early release of inmates, thereby resulting in the loss of state savings on prison operations that might otherwise amount to hundreds of millions of dollars annually.

County Jails. As mentioned above, early releases of jail inmates now occur in a number of counties, primarily in response to inmate population limits imposed on county jail facilities by federal courts. Given these actions by the federal courts, it is not clear how, and to what extent, the enactment of

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

such a state constitutional measure would affect jail operations and related expenditures in these counties. For example, it is possible that a county may comply with a population cap by expanding its use of GPS home monitoring or by decreasing the use of pretrial detention of suspects, rather than by releasing inmates early. In other counties not subject to federal court-ordered population caps, the measure's restrictions on early release of inmates could affect jail operations and related costs, depending upon the circumstances related to early release and how this provision was interpreted by the courts. Thus, the overall cost of this provision for counties is unknown.

Potential Net State Savings From Changes in Parole Board Procedures

The provisions of this measure that reduce the number of parole hearings received by inmates serving life terms would likely result in state savings amounting to millions of dollars annually. Additional savings in the low tens of millions of dollars annually could result from the provisions changing parole revocation procedures, such as by limiting when counsel would be provided by the state. However, some of these changes may run counter to the federal *Valdivia* court order related to parole revocations and therefore could be subject to legal challenges, potentially eliminating these savings. In addition, both the provisions related to parole consideration and revocation could ultimately increase state costs to the extent that they result in additional offenders being held in state prison longer than they would otherwise. Thus, the overall fiscal effect from these changes in parole revocation procedures is likely to be net state savings in the low tens of millions of dollars annually unless the changes in the process were found to conflict with federal legal requirements contained in the *Valdivia* court order.

Changes in Restitution Funding and Other Fiscal Impacts

Restitution Funding. The changes to the restitution process contained in this measure could affect state and local programs. Currently, a number of different state and local agencies receive funding from the fines and penalties collected from criminal offenders. For example, revenues collected from offenders go to counties' general funds, the state Fish and Game Preservation Fund for support of a variety of wildlife conservation programs, the Traumatic Brain Injury Fund to help adults recover from brain injuries, and the Restitution Fund for support of crime victim programs. Because this initiative requires that all monies collected from a defendant first be applied to pay restitution orders directly to the victim, it is possible that the payments of fine and penalty revenues to various funds, including the Restitution Fund, could decline.

However, any loss of Restitution Fund revenues may be offset to the extent that certain provisions of this initiative increase the amount of restitution received directly by victims, thereby reducing their reliance on assistance from the Restitution Fund. Similarly, this initiative may also generate some savings for state and local agencies to the extent that increases in payments of restitution to crime victims cause them to need less assistance from other state and local government programs, such as health and social services programs.

Legal Rights of Criminal Victims. Because the measure gives crime victims and their families and representatives a greater opportunity to participate in and receive notification of criminal justice proceedings, state and local agencies could incur additional administrative costs. Specifically, these costs could result from lengthier court and parole consideration proceedings and additional notification of victims by state and local agencies about these proceedings.

The net fiscal impact of these changes in restitution funding and legal rights of criminal victims on the state and local agencies is unknown.

★ ARGUMENT IN FAVOR OF PROPOSITION 9 ★

No pain is worse than losing a child or a loved one to murder . . . EXCEPT WHEN THE PAIN IS MAGNIFIED BY A SYSTEM THAT PUTS CRIMINALS' RIGHTS AHEAD OF THE RIGHTS OF INNOCENT VICTIMS.

The pain is real. It's also unnecessary to victims and costly to taxpayers.

Marsy Nicholas was a 21-year-old college student at UC Santa Barbara studying to become a teacher for disabled children. Her boyfriend ended her promising life with a shotgun blast at close range. Due to a broken system, the pain of losing Marsy was just the beginning.

Marsy's mother, Marcella, and family were grieving, experiencing pain unlike anything they'd ever felt. The only comfort was the fact Marsy's murderer was arrested.

Imagine Marcella's agony when she came face-to-face with Marsy's killer days later . . . at the grocery store!

How could he be free? He'd just killed Marcella's little girl. This can't be happening, she thought. Marsy's killer was free on bail but her family wasn't even notified. He could've easily killed again.

CALIFORNIA'S CONSTITUTION GUARANTEES RIGHTS FOR RAPISTS, MURDERERS, CHILD MOLESTERS, AND DANGEROUS CRIMINALS.

PROPOSITION 9 LEVELS THE PLAYING FIELD, GUARANTEEING CRIME VICTIMS THE RIGHT TO JUSTICE AND DUE PROCESS, ending further victimization of innocent people by a system that frequently neglects, ignores, and forever punishes them.

Proposition 9 creates California's Crime Victims' Bill of Rights to:

- REQUIRE THAT A VICTIM AND THEIR FAMILY'S SAFETY MUST BE CONSIDERED BY JUDGES MAKING BAIL DECISIONS FOR ACCUSED CRIMINALS.
- Mandate that crime victims be notified if their offender is released.
- REQUIRE VICTIMS BE NOTIFIED OF PAROLE HEARINGS IN ADVANCE TO ENSURE THEY CAN ATTEND AND HAVE A RIGHT TO BE HEARD.

- Require that victims be notified and allowed to participate in critical proceedings related to the crime, including bail, plea bargain, sentencing, and parole hearings.
- Give victims a constitutional right to prevent release of their personal confidential information or records to criminal defendants.

During these difficult budget times, PROP. 9 PROTECTS TAXPAYERS.

Currently, taxpayers spend millions on hearings for dangerous criminals that have virtually no chance of release. "Helter Skelter" inmates Bruce Davis and Leslie Van Houten, followers of Charles Manson, convicted of multiple brutal murders, have had 38 parole hearings in 30 years. That's 38 times the families involved have been forced to relive the painful crime and pay their own expenses to attend the hearing, plus 38 hearings that taxpayers have had to subsidize.

Prop. 9 allows parole judges to increase the number of years between parole hearings. CALIFORNIA'S NONPARTISAN LEGISLATIVE ANALYST SAID IT ACHIEVES, "POTENTIAL NET SAVINGS IN THE LOW TENS OF MILLIONS OF DOLLARS . . ."

PROP. 9 ALSO PREVENTS POLITICIANS FROM RELEASING DANGEROUS INMATES TO ALLEVIATE PRISON OVERCROWDING.

Prop. 9 respects victims, protects taxpayers, and makes California safer. It's endorsed by public safety leaders, victims' advocates, taxpayers, and working families.

PROP. 9 IS ABOUT FAIRNESS FOR LAW ABIDING CITIZENS. They deserve rights equal to those of criminals.

ON BEHALF OF ALL CURRENT AND FUTURE CRIME VICTIMS, PLEASE VOTE YES ON 9!

MARCELLA M. LEACH, Co-Founder

Justice for Homicide Victims

LAWANDA HAWKINS, Founder

Justice for Murdered Children

DAN LEVEY, National President

The National Organization of Parents of Murdered Children

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 9 ★

Our hearts go out to the victims of violent crime and their families. Prop. 9 was put on the ballot by one such family whose family member was killed 25 years ago. But Prop. 9 is unnecessary and will cost taxpayers millions of dollars.

During the past 25 years many fundamental changes have been made to our criminal justice laws such as the "Three Strikes Law;" and the "Victims' Bill of Rights" which placed victims' rights into the Constitution.

Under current law victims have the right to be notified if their offender is released, to receive advance notice of criminal proceedings, and to participate in parole hearings and sentencing. There's already a state-funded Victims of Crime Resource Center to educate victims about their rights and help them through the process.

That's why Prop. 9 is a horrible drain on taxpayers during the height of a budget crisis. It's why the independent Legislative

Analyst said it could cost "hundreds of millions of dollars annually."

Instead of streamlining government, Prop. 9 creates serious duplication of existing laws. It places pages of complex law into our Constitution. And once in the Constitution, if the laws don't work, and need to be changed or modernized in any way, it could require a $\frac{3}{4}$ vote of the Legislature. That's a threshold even higher than required to pass the state budget!

Vote NO on Prop. 9.

JEANNE WOODFORD, Former Warden
San Quentin State Prison

REV. JOHN FREESEMAN, Board President
California Church IMPACT

★ ARGUMENT AGAINST PROPOSITION 9 ★

Aren't you getting tired of one individual paying millions to put some idea, however well-meaning, on the ballot that ends up costing taxpayers billions?

Prop. 9 is the poster child for this, bought and paid for by one man—Henry Nicholas III.

Prop. 9 is a misleading proposition that exploits Californians' concern for crime victims. It preys on our emotions in order to rewrite the State Constitution and change the way California manages its prisons and jails, threatening to worsen our overcrowding crises, at both the state and local level.

Prop. 9 is a costly, unnecessary initiative. In fact, many of the components in Prop. 9—including the requirements that victims be notified of critical points in an offender's legal process as well as the rights for victims to be heard throughout the legal process—were already approved by voters in Prop. 8 in 1982, the Victims' Bill of Rights.

That's why Prop. 9 is truly unnecessary and an expensive duplication of effort. According to the *Appeal Democrat* newspaper, "this initiative is about little more than political grandstanding," ("Our View: Tough talk on crime just hot air," 3/1/08).

Voters sometimes don't realize that there is no mechanism for initiatives to be legally reviewed for duplication of current law. So, sometimes if it seems like a way to get something passed, the writers include current law in their initiatives. That's clearly what has been done in Prop. 9.

Californians are understandably concerned about safety and sympathetic to crime victims. Some of the provisions seem reasonable. Yet they hardly require an initiative to accomplish

them. For instance, passage of Prop. 9 would require law enforcement to give victims a "Marsy's Law" card spelling out their rights. Does the state really need to put this in the State Constitution? And at what cost?

Prop. 9 promises to stop the early release of criminals. The nonpartisan Legislative Analyst's Office says this could potentially "amount to hundreds of millions of dollars annually." The Legislative Analyst also points out that "the state does not now generally release inmates early from prison."

California's parole system is already among the most strict in the United States. The actual annual parole rate for those convicted of second degree murder or manslaughter has been less than 1% of those eligible for 20 years! So, the need for these tremendously costly changes to existing parole policy is unjustified given the costs involved.

Further, anything approved in Prop. 9 regarding prisoners and parole is subject to federal legal challenges. So, the likelihood that Prop. 9 would have any impact at all is negligible at best.

Taking money out of an already cash-strapped state budget to pay for an unnecessary initiative could mean cuts to every other priority of Government, including education, healthcare, and services for the poor and elderly.

Vote No on Prop. 9. It's unnecessary. It's expensive. It's bad law.

SHEILA A. BEDI, Executive Director
Justice Policy Institute

ALLAN BREED, Former Director
California Department of Corrections

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 9 ★

It's sad when special interests resort to personal attacks against crime victims and their families.

MAKE NO MISTAKE: TODAY, IN CALIFORNIA, INNOCENT VICTIMS ARE BEING PUNISHED BY A BROKEN SYSTEM.

Here are two examples, among thousands:

Anna Del Rio, whose daughter was executed by a "shooter for gangs," was intimidated by gang members—in court—and NOT ALLOWED TO SPEAK or wear a picture of her daughter.

Marguerite Hemphill left her paralyzed husband's bedside to attend the parole hearing for her daughter's killer. After driving 300 miles, she learned the hearing was postponed. HEMPHILL WASN'T NOTIFIED AND HAS NO RE COURSE . . . she must repeat the trip again.

If victims already have rights, why does this happen?

MURDERERS, RAPISTS, AND CHILD MOLESTERS HAVE RIGHTS GUARANTEED BY THE CALIFORNIA CONSTITUTION. CRIME VICTIMS AND THEIR FAMILIES HAVE NO SIMILAR CONSTITUTIONAL RIGHTS.

PROPOSITION 9 RESTORES JUSTICE, DUE PROCESS, HUMAN DIGNITY, AND FAIRNESS. It makes convicted

criminals pay their debt to society by prohibiting politicians from releasing criminals just to reduce prison populations.

Crime Victims United of California, Justice for Homicide Victims, Justice for Murdered Children, Memory of Victims Everywhere, National Organization of Parents of Murdered Children, police chiefs, sheriffs, and district attorneys say VOTE YES.

TRUST CALIFORNIANS: 1.2 MILLION PEOPLE, DEMOCRATS AND REPUBLICANS, PUT PROP. 9 ON THE BALLOT. IT CAN SAVE TAXPAYERS TENS OF MILLIONS according to the nonpartisan Legislative Analyst. More importantly, Prop. 9 can save lives.

Remember the pain endured by victims Anna Del Rio and Marguerite Hemphill. Please vote YES.

MARCELLA LEACH, Co-Founder
Justice for Homicide Victims
HARRIET SALARNO, President
Crime Victims United of California
MARK LUNSFORD, Creator
Jessica's Law: Sexual Predator Punishment and Control Act of 2006

consistent with Section 25740.1, the Public Utilities Commission shall encourage and give the highest priority to allocations for the construction of, or payment to supplement the construction of, any new or modified electric transmission facilities necessary to facilitate the state achieving its renewables portfolio standard targets.

(c) All projects receiving funding, in whole or in part, pursuant to this section shall be considered public works projects subject to the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and the Department of Industrial Relations shall have the same authority and responsibility to enforce those provisions as it has under the Labor Code.

SEC. 28. Section 25745 is added to the Public Resources Code, to read:

25745. The Energy Commission shall use its best efforts to attract and encourage investment in solar and clean energy resources, facilities, research and development from companies based in the United States to fulfill the purposes of this chapter.

SEC. 29. Section 25751.5 is added to the Public Resources Code, to read:

25751.5. (a) The Solar and Clean Energy Transmission Account is hereby established within the Renewable Resources Trust Fund.

(b) Beginning January 1, 2009, the total annual adjustments adopted pursuant to subdivision (d) of Section 399.8 of the Public Utilities Code shall be allocated to the Solar and Clean Energy Transmission Account.

(c) Funds in the Solar and Clean Energy Transmission Account shall be used, in whole or in part, for the following purposes:

(1) The purchase of property or right-of-way pursuant to the commission's authority under Chapter 8.9 (commencing with Section 25790).

(2) The construction of, or payment to supplement the construction of, any new or modified electric transmission facilities necessary to facilitate the state achieving its renewables portfolio standard targets.

(d) Title to any property or project paid for in whole pursuant to this section shall vest with the commission. Title to any property or project paid for in part pursuant to this section shall vest with the commission in a part proportionate to the commission's share of the overall cost of the property or project.

(e) Funds deposited in the Solar and Clean Energy Transmission Account shall be used to supplement, and not to supplant, existing state funding for the purposes authorized by subdivision (c).

(f) All projects receiving funding, in whole or in part, pursuant to this section shall be considered public works projects subject to the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and the Department of Industrial Relations shall have the same authority and responsibility to enforce those provisions as it has under the Labor Code.

SEC. 30. Chapter 8.9 (commencing with Section 25790) is added to Division 15 of the Public Resources Code, to read:

25790. The Energy Commission may, for the purposes of this chapter, purchase and subsequently sell, lease to another party for a period not to exceed 99 years, exchange, subdivide, transfer, assign, pledge, encumber, or otherwise dispose of any real or personal property or any interest in property. Any such lease or sale shall be conditioned on the development and use of the property for the generation and/or transmission of renewable energy.

25791. Any lease or sale made pursuant to this chapter may be made without public bidding but only after a public hearing.

SEC. 31. Severability

The provisions of this act are severable. If any provision of this act, or part thereof, is for any reason held to be invalid under state or federal law, the remaining provisions shall not be affected, but shall remain in full force and effect.

SEC. 32. Amendment

The provisions of this act may be amended to carry out its purpose and intent by statutes approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SEC. 33. Conflicting Measures

(a) This measure is intended to be comprehensive. It is the intent of the people that in the event that this measure and another initiative measure relating to the same subject appear on the same statewide election ballot, the provisions of the other measure or measures are deemed to be in conflict with this measure. In the event this measure shall receive the greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of 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 ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-

executing and given full force of law.

SEC. 34. Legal Challenge

Any challenge to the validity of this act must be filed within six months of the effective date of this act.

PROPOSITION 8

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

SECTION 1. Title

This measure shall be known and may be cited as the "California Marriage Protection Act."

SECTION 2. Section 7.5 is added to Article I of the California Constitution, to read:

SEC. 7.5. Only marriage between a man and a woman is valid or recognized in California.

PROPOSITION 9

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the California Constitution and amends and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout~~ type and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

VICTIMS' BILL OF RIGHTS ACT OF 2008: MARSY'S LAW

SECTION 1. TITLE

This act shall be known, and may be cited as, the "Victims' Bill of Rights Act of 2008: Marsy's Law."

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California hereby find and declare all of the following:

1. Crime victims are entitled to justice and due process. Their rights include, but are not limited to, the right to notice and to be heard during critical stages of the justice system; the right to receive restitution from the criminal wrongdoer; the right to be reasonably safe throughout the justice process; the right to expect the government to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer.

2. The People of the State of California declare that the "Victims' Bill of Rights Act of 2008: Marsy's Law" is needed to remedy a justice system that fails to fully recognize and adequately enforce the rights of victims of crime. It is named after Marsy, a 21-year-old college senior at U.C. Santa Barbara who was preparing to pursue a career in special education for handicapped children and had her whole life ahead of her. She was murdered on November 30, 1983. Marsy's Law is written on behalf of her mother, father, and brother, who were often treated as though they had no rights, and inspired by hundreds of thousands of victims of crime who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights.

3. The People of the State of California find that the "broad reform" of the criminal justice system intended to grant these basic rights mandated in the Victims' Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the people. Victims of crime continue to be denied rights to justice and due process.

4. An inefficient, overcrowded, and arcane criminal justice system has failed to build adequate jails and prisons, has failed to efficiently conduct court proceedings, and has failed to expeditiously finalize the sentences and punishments of criminal wrongdoers. Those criminal wrongdoers are being released from custody after serving as little as 10 percent of the sentences imposed and determined to be appropriate by judges.

5. Each year hundreds of convicted murderers sentenced to serve life in prison seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of murdered victims and waste

millions of dollars each year. In California convicted murderers are appointed attorneys paid by the tax dollars of its citizens, and these convicted murderers are often given parole hearings every year. The families of murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again free to murder.

6. "Helter Skelter" inmates Bruce Davis and Leslie Van Houghton, two followers of Charles Manson convicted of multiple brutal murders, have had 38 parole hearings during the past 30 years.

7. Like most victims of murder, Marsy was neither rich nor famous when she was murdered by a former boyfriend who lured her from her parents' home by threatening to kill himself. Instead he used a shotgun to brutally end her life when she entered his home in an effort to stop him from killing himself. Following her murderer's arrest, Marsy's mother was shocked to meet him at a local supermarket, learning that he had been released on bail without any notice to Marsy's family and without any opportunity for her family to state their opposition to his release.

8. Several years after his conviction and sentence to "life in prison," the parole hearings for his release began. In the first parole hearing, Marsy's mother suffered a heart attack fighting against his release. Since then Marsy's family has endured the trauma of frequent parole hearings and constant anxiety that Marsy's killer would be released.

9. The experiences of Marsy's family are not unique. Thousands of other crime victims have shared the experiences of Marsy's family, caused by the failure of our criminal justice system to notify them of their rights, failure to give them notice of important hearings in the prosecutions of their criminal wrongdoers, failure to provide them with an opportunity to speak and participate, failure to impose actual and just punishment upon their wrongdoers, and failure to extend to them some measure of finality to the trauma inflicted upon them by their wrongdoers.

SECTION 3. STATEMENT OF PURPOSES AND INTENT

It is the purpose of the People of the State of California in enacting this initiative measure to:

1. Provide victims with rights to justice and due process.

2. Invoke the rights of families of homicide victims to be spared the ordeal of prolonged and unnecessary suffering, and to stop the waste of millions of taxpayer dollars, by eliminating parole hearings in which there is no likelihood a murderer will be paroled, and to provide that a convicted murderer can receive a parole hearing no more frequently than every three years, and can be denied a follow-up parole hearing for as long as 15 years.

SECTION 4. VICTIMS' BILL OF RIGHTS

SECTION 4.1. Section 28 of Article 1 of the California Constitution is amended to read:

SEC. 28. (a) The People of the State of California find and declare *all of the following:*

(1) *Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.*

(2) *Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of grave statewide concern high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.*

(3) *The rights of victims pervade the criminal justice system; encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).*

(4) *The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested*

outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

(5) *Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.*

(6) *Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.*

(7) *Such Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.*

(8) *To accomplish these goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime. Broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives:*

(b) *In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:*

(1) *To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.*

(2) *To be reasonably protected from the defendant and persons acting on behalf of the defendant.*

(3) *To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.*

(4) *To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.*

(5) *To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.*

(6) *To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.*

(7) *To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.*

(8) *To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.*

(9) *To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.*

(10) *To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.*

(11) *To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.*

(12) *To be informed, upon request, of the conviction, sentence, place and*

time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

(13) **To Restitution**

(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes for causing the losses they suffer.

(B) Restitution shall be ordered from the convicted persons wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

(14) **To the prompt return of property when no longer needed as evidence.**

(15) **To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.**

(16) **To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.**

(17) **To be informed of the rights enumerated in paragraphs (1) through (16).**

(c) (1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(2) This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

(d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following:

(1) **Right to Safe Schools.** All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.

(g) (2) **Right to Truth-in-Evidence.** Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(h) (3) **Public Safety Bail.** A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the

previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary consideration considerations.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) (4) **Use of Prior Convictions.** Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

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

(6) **Reform of the parole process.** The current process for parole hearings is excessive, especially in cases in which the defendant has been convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.

(g) As used in this article, the term "serious felony" is any crime defined in subdivision (c) of Penal Code, Section 1192.7(c) of the Penal Code, or any successor statute.

SECTION 5. VICTIMS' RIGHTS IN PAROLE PROCEEDINGS

SECTION 5.1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms Parole Hearings, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf. Neither the prisoner nor the attorney for the prisoner shall be entitled to ask questions of any person appearing at the hearing pursuant to subdivision (b) of Section 3043.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner and any person described in subdivision (b) of Section 3043 shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(6) The board shall set a date to reconsider whether an inmate should be released on parole that ensures a meaningful consideration of whether the inmate is suitable for release on parole.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3044, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

(3) The board shall hear each case annually thereafter, except the board may

schedule the next hearing no later than the following, after considering the views and interests of the victim, as follows:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding. Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than 10 additional years.

(B) Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years. Ten years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than seven additional years.

(C) Three years, five years, or seven years after any hearing at which parole is denied, because the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety requires a more lengthy period of incarceration for the prisoner, but does not require a more lengthy period of incarceration for the prisoner than seven additional years.

(4) The board may in its discretion, after considering the views and interests of the victim, advance a hearing set pursuant to paragraph (3) to an earlier date, when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the prisoner provided in paragraph (3).

(5) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(6) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2) (3).

(c) The board shall conduct a parole hearing pursuant to this section as a *de novo* hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in paragraph (3) of subdivision (a) of Section 3041.

(d) (1) An inmate may request that the board exercise its discretion to advance a hearing set pursuant to paragraph (3) of subdivision (b) to an earlier date, by submitting a written request to the board, with notice, upon request, and a copy to the victim which shall set forth the change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate.

(2) The board shall have sole jurisdiction, after considering the views and interests of the victim to determine whether to grant or deny a written request made pursuant to paragraph (1), and its decision shall be subject to review by a court or magistrate only for a manifest abuse of discretion by the board. The board shall have the power to summarily deny a request that does not comply with the provisions of this subdivision or that does not set forth a change in circumstances or new information as required in paragraph (1) that in the judgment of the board is sufficient to justify the action described in paragraph (4) of subdivision (b).

(3) An inmate may make only one written request as provided in paragraph (1) during each three-year period. Following either a summary denial of a request made pursuant to paragraph (1), or the decision of the board after a hearing described in subdivision (a) to not set a parole date, the inmate shall not be entitled to submit another request for a hearing pursuant to subdivision (a) until a three-year period of time has elapsed from the summary denial or decision of the board.

SECTION 5.2. Section 3043 of the Penal Code is amended to read:

3043. (a) (1) Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms Parole Hearings at least 30 90 days before the hearing to any victim of a *any* crime committed by the prisoner, or to the next of kin of the victim if the victim has died, *to include the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, and any other felony crimes or crimes against the person for which the prisoner has been convicted.* The requesting party shall keep the board apprised of his or her current mailing address.

(2) *No later than 30 days prior to the date selected for the hearing, any person, other than the victim, entitled to attend the hearing shall inform the board of his or her intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany him or her.*

(3) *No later than 14 days prior to the date selected for the hearing, the board shall notify every person entitled to attend the hearing confirming the date, time, and place of the hearing.*

(b) (1) The victim, next of kin, two members of the victim's immediate family, or and two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin in writing prior to the hearing as provided in paragraph (2) of this subdivision have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his, her, or their views concerning the prisoner and the case, including, but not limited to the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, any other felony crimes or crimes against the person for which the prisoner has been convicted, the effect of the enumerated crimes on the victim and the family of the victim, crime and the person responsible for these enumerated crimes, and the suitability of the prisoner for parole. *; except that*

(2) *Any statement provided by a representative designated by the victim or next of kin may cover any subject about which the victim or next of kin has the right to be heard including any recommendation regarding the granting of parole. shall be limited to comments concerning the effect of the crime on the victim. The representatives shall be designated by the victim or, in the event that the victim is deceased or incapacitated, by the next of kin. They shall be designated in writing for the particular hearing prior to the hearing.*

(c) A representative designated by the victim or the victim's next of kin for purposes of this section may be any adult person selected by the victim or the family of the victim must be either a family or household member of the victim. The board may not shall permit a representative designated by the victim or the victim's next of kin to attend a particular hearing, to provide testimony at a hearing, or and to submit a statement to be included in the hearing as provided in Section 3043.2, even though if the victim, next of kin, or a member of the victim's immediate family is present at the hearing, or if and even though the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.

(d) *Nothing in this section is intended to allow the board to permit a victim's representative to attend a particular hearing if the victim, next of kin, or a member of the victim's immediate family is present at any hearing covered in this section, or if the victim, next of kin, or member of the victim's immediate family has submitted a written, audiotaped, or videotaped statement.*

(e) The board, in deciding whether to release the person on parole, shall consider the *entire and uninterrupted* statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

In

(e) In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board *may, in its discretion, shall* allow attendance of additional immediate family members or limit attendance to the following order of preference to include the following: spouse, children, parents, siblings, grandchildren, and grandparents.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SECTION 5.3. Section 3044 is added to the Penal Code, to read:

3044. (a) Notwithstanding any other law, the Board of Parole Hearings or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process. Accordingly, to protect a victim from harassment and abuse during the parole process, no person paroled from a California correctional facility following incarceration for an offense committed on or after the effective date of this act shall, in the event his or her parole is revoked, be entitled to procedural rights other than the following:

(1) A parolee shall be entitled to a probable cause hearing no later than 15 days following his or her arrest for violation of parole.

(2) A parolee shall be entitled to an evidentiary revocation hearing no later than 45 days following his or her arrest for violation of parole.

(3) A parolee shall, upon request, be entitled to counsel at state expense only if, considering the request on a case-by-case basis, the board or its hearing officers determine:

(A) The parolee is indigent; and

(B) Considering the complexity of the charges, the defense, or because the parolee's mental or educational capacity, he or she appears incapable of speaking effectively in his or her own defense.

(4) In the event the parolee's request for counsel, which shall be considered on a case-by-case basis, is denied, the grounds for denial shall be stated succinctly in the record.

(5) Parole revocation determinations shall be based upon a preponderance of evidence admitted at hearings including documentary evidence, direct testimony, or hearsay evidence offered by parole agents, peace officers, or a victim.

(6) Admission of the recorded or hearsay statement of a victim or percipient witness shall not be construed to create a right to confront the witness at the hearing.

(b) The board is entrusted with the safety of victims and the public and shall make its determination fairly, independently, and without bias and shall not be influenced by or weigh the state cost or burden associated with just decisions. The board must accordingly enjoy sufficient autonomy to conduct unbiased hearings, and maintain an independent legal and administrative staff. The board shall report to the Governor.

SECTION 6. NOTICE OF VICTIMS' BILL OF RIGHTS

SECTION 6.1. Section 679.026 is added to the Penal Code, to read:

679.026. (a) It is the intent of the people of the State of California in enacting this section to implement the rights of victims of crime established in Section 28 of Article I of the California Constitution to be informed of the rights of crime victims enumerated in the Constitution and in the statutes of this state.

(b) Every victim of crime has the right to receive without cost or charge a list of the rights of victims of crime recognized in Section 28 of Article I of the California Constitution. These rights shall be known as "Marsy Rights."

(c) (1) Every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall, as provided herein, at the time of initial contact with a crime victim, during follow-up investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys, provide or make available to each victim of the criminal act without charge or cost a "Marsy Rights" card described in paragraphs (3) and (4).

(2) The victim disclosures required under this section shall be available to the public at a state funded and maintained Web site authorized pursuant to Section 14260 of the Penal Code to be known as "Marsy's Page."

(3) The Attorney General shall design and make available in ".pdf" or other imaging format to every agency listed in paragraph (1) a "Marsy Rights" card, which shall contain the rights of crime victims described in subdivision (b) of Section 28 of Article I of the California Constitution, information on the means by which a crime victim can access the web page described in paragraph (2), and a toll-free telephone number to enable a crime victim to contact a local victim's assistance office.

(4) Every law enforcement agency which investigates criminal activity shall, if provided without cost to the agency by any organization classified as a nonprofit organization under paragraph (3) of subdivision (c) of Section 501 of the Internal Revenue Code, make available and provide to every crime victim a "Victims' Survival and Resource Guide" pamphlet and/or video that has been approved by the Attorney General. The "Victims' Survival and

Resource Guide" and video shall include an approved "Marsy Rights" card, a list of government agencies, nonprofit victims' rights groups, support groups, and local resources that assist crime victims, and any other information which the Attorney General determines might be helpful to victims of crime.

(5) Any agency described in paragraph (1) may in its discretion design and distribute to each victim of a criminal act its own Victims' Survival and Resource Guide and video, the contents of which have been approved by the Attorney General, in addition to or in lieu of the materials described in paragraph (4).

SECTION 7. CONFLICTS WITH EXISTING LAW

It is the intent of the People of the State of California in enacting this act that if any provision in this act conflicts with an existing provision of law which provides for greater rights of victims of crime, the latter provision shall apply.

SECTION 8. SEVERABILITY

If any provision of this act, or part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SECTION 9. AMENDMENTS

The statutory provisions of this act shall not be amended by the Legislature except by a statute passed in each house by roll-call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the statutory provisions of this act to expand the scope of their application, to recognize additional rights of victims of crime, or to further the rights of victims of crime by a statute passed by a majority vote of the membership of each house.

SECTION 10. RETROACTIVITY

The provisions of this act shall apply in all matters which arise and to all proceedings held after the effective date of this act.

PROPOSITION 10

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE CALIFORNIA RENEWABLE ENERGY AND CLEAN ALTERNATIVE FUEL ACT.

SECTION 1. Title.

This measure shall be known and may be cited as "The California Renewable Energy and Clean Alternative Fuel Act."

SECTION 2. Findings and declarations.

The people of California find and declare the following:

A. California's excessive dependence on petroleum products threatens our health, our environment, our economy and our national security.

B. Transportation accounts for 40 percent of California's annual greenhouse gas emissions, and we rely on petroleum-based fuels for an overwhelming 96 percent of our transportation needs. This petroleum dependency contributes to climate change and leaves workers, consumers and businesses vulnerable to price spikes from an unstable energy market.

C. The landmark California Global Warming Solutions Act of 2006 requires California to reduce statewide greenhouse gas emissions to 1990 levels by 2020.

D. Governor Schwarzenegger has issued an executive order establishing a groundbreaking low carbon fuel standard that will reduce the carbon intensity of California's passenger vehicle fuels by at least 10 percent by 2020. This standard is expected to triple the state's renewable fuels market and put 20 times the number of alternative fuel or hybrid vehicles on our roads.

E. Government should provide public funds to meet these policy goals by creating incentives for businesses and consumers to conserve energy and use alternative energy sources.

F. A comprehensive alternative energy strategy must be implemented. This strategy should concentrate on three areas: renewable electricity generation, clean alternative fuels for transportation, and energy efficiency

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **KOWALCZYK (GERALD JOHN) ON
H.C.**

Case Number: **S277910**

Lower Court Case Number: **A162977**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **adam.vining@pubdef.ocgov.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	APPLICATION TO SUBMIT THE CORRECT AMICUS CURIAE BRIEF
BRIEF	BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER

Service Recipients:

Person Served	Email Address	Type	Date / Time
Sujung Kim Office of San Francisco Public Defender 176602	sujung.kim@sfgov.org	e-Serve	12/4/2023 4:36:32 PM
Kathryn Parker Complex Appellate Litigation Group LLP	paralegals@calg.com	e-Serve	12/4/2023 4:36:32 PM
Joshua Martin San Mateo County District Attorney 601450	jxmartin@smcgov.org	e-Serve	12/4/2023 4:36:32 PM
Cynthia Janis Office of the Alternate Public Defender 198900	cjanis@apd.lacounty.gov	e-Serve	12/4/2023 4:36:32 PM
Holly Sutton San Mateo County District Attorney	hsutton@smcgov.org	e-Serve	12/4/2023 4:36:32 PM
Alicia Virani 281187	virani@law.ucla.edu	e-Serve	12/4/2023 4:36:32 PM
Ian Kanig Keker, Van Nest & Peters LLP 295623	ikanig@keker.com	e-Serve	12/4/2023 4:36:32 PM
Avram Frey ACLU of Northern California 347885	afrey@aclunc.org	e-Serve	12/4/2023 4:36:32 PM
Salil Dudani Civil Rights Corps	salil@civilrightscorps.org	e-Serve	12/4/2023 4:36:32

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Nicholas Hunt Office of the District Attorney 333308	nicholas.hunt@sfgov.org	e-Serve	12/4/2023 4:36:32 PM
Rebecca Baum San Mateo County District Attorney 212500	rbaum@smcgov.org	e-Serve	12/4/2023 4:36:32 PM
Joseph Arrocha County of Orange Public Defender's Office	Joseph.arrocha@ocpubdef.com	e-Serve	12/4/2023 4:36:32 PM
Salil Dudani Federal Defenders of San Diego	salil.dudani@gmail.com	e-Serve	12/4/2023 4:36:32 PM
Carson White Civil Rights Corps 323535	carson@civilrightscorps.org	e-Serve	12/4/2023 4:36:32 PM
Kymberlee Stapleton Criminal Justice Legal Foundation 213463	kym.stapleton@cjlf.org	e-Serve	12/4/2023 4:36:32 PM
Chesa Boudin UC Berkeley Criminal Law & Justice Center 284577	chesa@berkeley.edu	e-Serve	12/4/2023 4:36:32 PM
Attorney Attorney General - San Francisco Office Court Added	sfagdocketing@doj.ca.gov	e-Serve	12/4/2023 4:36:32 PM
Cody Harris Keker Van Nest & Peters LLP 255302	charris@keker.com	e-Serve	12/4/2023 4:36:32 PM
Kassandra Dibble ACLU of Northern California	kdibble@aclunc.org	e-Serve	12/4/2023 4:36:32 PM
Sean Daugherty San Bernardino County 214207	SDaugherty@sbcda.org	e-Serve	12/4/2023 4:36:32 PM
Kent Scheidegger Criminal Justice Legal Foundation 105178	kent.scheidegger@cjlf.org	e-Serve	12/4/2023 4:36:32 PM
Alexander Bartel Orange County Public Defender	alex.bartel@ocpubdef.com	e-Serve	12/4/2023 4:36:32 PM
Emi Young ACLU Foundation of Northern California 311238	eyoung@aclunc.org	e-Serve	12/4/2023 4:36:32 PM
Teresa De Amicis STATE PUBLIC DEFENDER 257841	Teresa.DeAmicis@ospd.ca.gov	e-Serve	12/4/2023 4:36:32 PM
Rose Mishaan Law Offices of Marsanne Weese 267565	rose.mishaan@gmail.com	e-Serve	12/4/2023 4:36:32 PM
Alex Bartel Orange County Public Defender	alex.bartel@pubdef.ocgov.com	e-Serve	12/4/2023 4:36:32

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Norma Solis County of Orange Public Defender's Office	Norma.solis@ocpubdef.com	e-Serve	12/4/2023 4:36:32 PM
ELIZABETH MCALONEY ORANGE COUNTY PUBLIC DEFENDER	elizabeth.mcaloney@pubdef.ocgov.com	e-Serve	12/4/2023 4:36:32 PM
Allison Macbeth San Francisco District Attorney's Office 203547	allison.macbeth@sfgov.org	e-Serve	12/4/2023 4:36:32 PM
Courtney Liss Keker, Van Nest & Peters LLP 339493	cliss@keker.com	e-Serve	12/4/2023 4:36:32 PM
Stephen Wagstaffe Office of the District Attorney	sgiridharadas@smcgov.org	e-Serve	12/4/2023 4:36:32 PM
Cynthia Chandler District Attorney, County of Alameda 178044	cynthia.chandler@acgov.org	e-Serve	12/4/2023 4:36:32 PM
Carmen Lo ARNOLD & PORTER KAYE SCHOLER LLP	clo@whitecase.com	e-Serve	12/4/2023 4:36:32 PM
Eric Phung Keker, Van Nest & Peters LLP 346625	ephung@keker.com	e-Serve	12/4/2023 4:36:32 PM
Marsanne Weese Law Offices of Marsanne Weese 232167	marsanne@marsannelaw.com	e-Serve	12/4/2023 4:36:32 PM
Lisa Maguire San Mateo County Private Defender Program	lisam@smcba.org	e-Serve	12/4/2023 4:36:32 PM
Melissa Clack Alameda County District Attorney's Office - Environmental Division	melissa.clack@acgov.org	e-Serve	12/4/2023 4:36:32 PM
Sophie Hood Keker, Van Nest & Peters LLP 295881	shood@keker.com	e-Serve	12/4/2023 4:36:32 PM
Kelly Woodruff COMPLEX APPELLATE LITIGATION GROUP LLP 160235	kelly.woodruff@calg.com	e-Serve	12/4/2023 4:36:32 PM
Jerome Ferrer Arnold & Porter Kaye Scholer	jerome.ferrer@arnoldporter.com	e-Serve	12/4/2023 4:36:32 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/4/2023

Date

/s/ELIZABETH MCALONEY

Signature

Vining, Adam (233702)

Last Name, First Name (PNum)

Orange County Public Defender

Law Firm