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SUPREME COURT
FILED

NOV 10 2014

Frank A. McGuire Clerk

Deputy

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

DENNIS TERRY MARTINEZ,

Defendant and Appellant.

Case No. S219970

Fourth Appellate
District, Division Two,
Case No. E057976

San Bernardino County
Superior Court, Case
No. FMB1200197

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE AND
DECLARATION OF MICHAEL PULOS IN SUPPORT THEREOF**

Respondent respectfully moves this court, pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rule 8.252, to take

judicial notice of materials relating to the addition of, and amendment to, section 28 of article I of the California Constitution, namely, pages 32–35 and 54–56 of the California Ballot Pamphlet for the California Primary Election of June 8, 1982, and pages 58–63 and 128–132 of the Official Voter Information Guide for the California General Election of November 4, 2008. (See *In re Varnell* (2003) 30 Cal.4th 1132, 1144, fn. 7 [granting request for judicial notice of ballot pamphlet materials relating to a voter initiative proposition].)

The pertinent pages were retrieved from our office library and appended to this motion. (Cal. Rules of Court, rule 8.252(a)(3); see also Declaration of Michael Pulos in Support of Motion for Judicial Notice.) Electronic copies also can be found at <http://library.uchastings.edu/research/ballots/ballot-pamphlets.php>.

These materials are relevant to this case because they are the proper extrinsic aids for construing the voters' intent in adding, and later amending, section 28 of article I of the California Constitution. (Cal. Rules of Court, rule 8.252(a)(2)(A); see also *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321 [“If the text is ambiguous and supports multiple interpretations, we may then turn to extrinsic sources such as ballot summaries and arguments for insight into the voters' intent”].) Neither the trial court nor the Court of Appeal took judicial notice of these materials. (See Cal. Rules of Court, rule 8.252(a)(2)(B).) These materials consist of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy,” as well as “[o]fficial acts of the legislative, executive, and judicial departments of” the State of California. (Evid. Code, § 452, subds. (h) & (c); Cal. Rules of Court, rule 8.252(a)(2)(C).) Finally, the materials do not relate to proceedings

occurring after the order or judgment that is the subject of this appeal. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

CONCLUSION

For the reasons stated above, respondent respectfully requests that this court take judicial notice of the attached documents.

Dated: November 6, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
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Senior Assistant Attorney General
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Deputy Solicitor General
LISE S. JACOBSON
Deputy Attorney General



MICHAEL PULOS
Deputy Attorney General
Attorneys for Plaintiff and Respondent

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**DECLARATION OF MICHAEL PULOS IN SUPPORT OF
RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

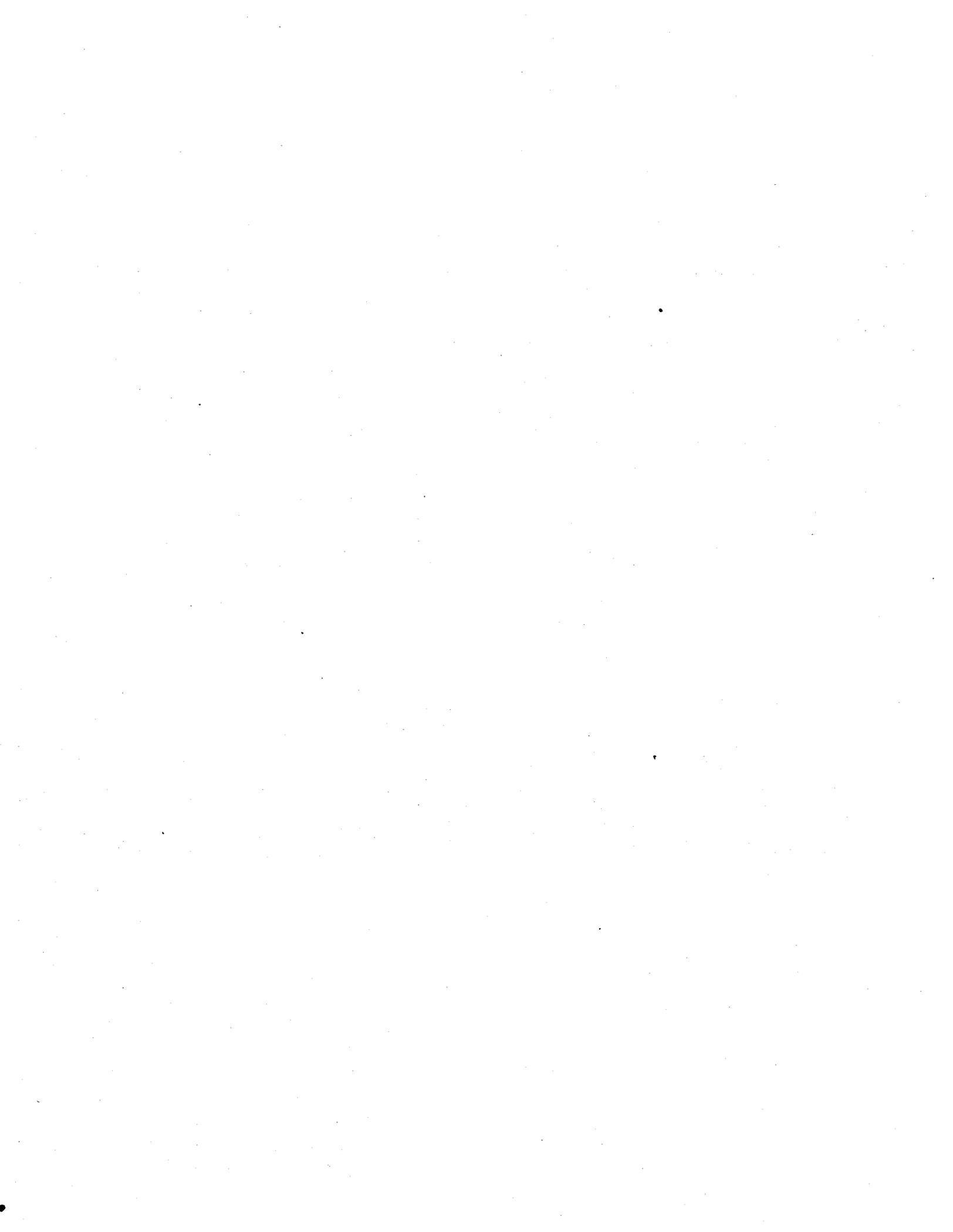
I, Michael Pulos, declare as follows:

1. I am a deputy attorney general for the State of California and the primary attorney responsible for this case.
2. The attached documents are the materials relating to the addition of, and amendment to, section 28 of article I of the California Constitution, namely, pages 32–35 and 54–56 of the California Ballot Pamphlet for the California Primary Election of June 8, 1982, and pages 58–63 and 128–132 of the Official Voter Information Guide for the California General Election of November 4, 2008.
3. I am informed and believe that the attached documents are true and correct copies retrieved from our office library, which keeps copies of the official voter guides distributed by the California Secretary of State.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of November 2014, at San Diego, California.



Michael Pulos
Declarant



DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Dennis Terry Martinez**
No.: **S219970**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 7, 2014, I served the attached **RESPONDENT'S MOTION FOR JUDICIAL NOTICE AND DECLARATION OF MICHAEL PULOS IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Appellate Division
San Bernardino County
District Attorney's Office
412 West Hospitality Lane, 1st Floor
San Bernardino, CA 92415-0042

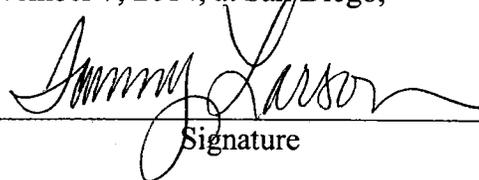
Clerk of the Court
Appeals Division
San Bernardino County Superior Court
247 W. Third Street, 2nd Floor
San Bernardino, CA 92415-0063

Court of Appeal of the State of California
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, CA 92501

and furthermore, I declare in compliance with California Rules of Court, rules 2.251(i)(1) and 8.71(f)(1); I electronically served a copy of the above document on Appellate Defenders, Inc.'s electronic service address eservice-criminal@adi-sandiego.com and on Thomas E. Robertson, appellant's attorney, via the registered electronic service address thomas@robertsonsdlaw.com by 5:00 p.m. on the close of business day. The Office of the Attorney General's electronic service address is ADIEService@doj.ca.gov.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 7, 2014, at San Diego, California.

Tammy Larson
Declarant


Signature



ATTACHMENT

JUN 09 1982

CALIFORNIA BALLOT PAMPHLET

Primary Election

June 8, 1982

JUSTICE DEPT.
LIBRARY
SAN DIEGO



Compiled by MARCH FONG EU · Secretary of State
Analyses by WILLIAM G. HAMM · Legislative Analyst

Official Title and Summary Prepared by the Attorney General

CRIMINAL JUSTICE. INITIATIVE STATUTES AND CONSTITUTIONAL AMENDMENT. Amends Constitution and enacts several statutes concerning procedural treatment, sentencing, release, and other matters for accused and convicted persons. Includes provisions regarding restitution to victims from persons convicted of crimes, right to safe schools, exclusion of relevant evidence, bail, use of prior felony convictions for impeachment purposes or sentence enhancement, abolishing defense of diminished capacity, use of evidence regarding mental disorder, proof of insanity, notification and appearance of victims at sentencing and parole hearings, restricting plea bargaining, Youth Authority commitments, and other matters. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: As the fiscal effect would depend on many factors that cannot be predicted, the net fiscal effect of this measure cannot be determined with any degree of certainty. However, approval of the measure would result in major state and local costs. The measure could: increase local administration costs; increase state administrative costs; increase claims against the state and local governments relating to enforcement of the right to safe schools; increase school security costs to provide safe schools; increase the cost of operating county jails by increasing the jail populations; increase court costs; and increase the cost of operating the state's prison system by increasing the prison population (estimated to be about \$47 million increased annual prison operating costs and \$280 million prison construction costs based on various assumptions).

Analysis by the Legislative Analyst

Background:

The California criminal justice system is governed by the State Constitution, by statutes enacted by the Legislature and the people, and by court rulings.

Under the criminal justice system, persons convicted of *misdemeanors* may be fined or sentenced to a county jail term, or both. Those convicted of *felonies* may be fined in some cases, sentenced to state prison, or (if they were under 21 years of age at the time they were apprehended) committed to the Youth Authority, or both fined and imprisoned. For some crimes, a person may receive "probation" in lieu of a prison sentence or a fine.

Proposal:

This initiative proposes many changes in the State Constitution and statutory law that would alter criminal justice procedures and punishments and constitutional rights. The major changes are summarized below.

Restitution. Under existing law, victims of crime are not automatically entitled to receive "restitution" from the person convicted of the crime. (Restitution would involve, for example, replacement of stolen or damaged property, or reimbursement for costs that the victim incurred as a result of the crime.) In some cases, however, the courts release a convicted person on probation, on the condition that restitution be provided to the victim or victims.

This measure would grant crime victims who suffer losses a constitutional right to receive restitution. Except in unusual cases, convicted persons would be required to make restitution to all of their victims who suffer losses. The extent to which restitution would be made would depend on how many convicted persons have or acquire sufficient assets to make restitution.

The Legislature would be responsible for adopting laws to implement this section of the measure.

Safe Schools. The Constitution currently provides that all people have the inalienable right of "pursuing and obtaining safety, happiness, and privacy." In addition, statutory law prohibits various acts upon school grounds which disturb the peace of students or staff, or which disrupt the peaceful conduct of school activities. This measure would add a section to the State Constitution declaring that students and staff of public elementary and secondary schools have the "inalienable right to attend campuses which are safe, secure, and peaceful."

Evidence. Under current law, certain evidence is not permitted to be presented in a criminal trial or hearing. For example, evidence obtained through unlawful eavesdropping or wiretapping, or through unlawful searches of persons or property, cannot be used in court. This measure generally would allow most relevant evidence to be presented in criminal cases, subject to such exceptions as the Legislature may in the future enact by a two-thirds vote. The measure could not affect *federal* restrictions on the use of evidence.

Bail. Under the State Constitution and statutory law, the courts generally must release on bail all persons accused of committing a crime, while they await trial. The courts may deny bail *only* for those who are accused of felonies punishable by death if the court determines that the proof of guilt is evident or the presumption of guilt is great.

In fixing the amount of bail, courts are required by statute to consider the seriousness of the offense with which the person is charged, the defendant's previous criminal record and the probability that the defendant will appear at the trial or hearings of the case. The State Constitution prohibits courts from setting "excessive" bail.

The courts also may allow those accused of commit-

Continued on page 54

Text of Proposed Law

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

This initiative measure expressly repeals and adds existing provisions of the Constitution, and adds provisions to the Penal Code and the Welfare and Institutions Code; therefore, 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

SEC. 1. This amendment shall be known as "The Victims' Bill of Rights".

SEC. 2. Section 12 of Article I of the Constitution is repealed.

~~SEC. 12. A person shall 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.~~

~~A person may be released on his or her own recognizance in the court's discretion.~~

SEC. 3. Section 28 is added to Article I of the Constitution, to read:

SEC. 28. (a) *The People of the State of California find and declare that 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 those rights, is a matter of grave statewide concern.*

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 that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, 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) *Restitution. 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 restitution from the persons convicted of the crimes for losses they suffer.*

Restitution shall be ordered from the convicted persons 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) *Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.*

(d) *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.*

(e) *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 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 shall be the primary consideration.*

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 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) *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.*

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

SEC. 4. Diminished Capacity; Insanity. Section 25 is added to the Penal Code, to read:

25. (a) *The defense of diminished capacity is hereby abolished. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged.*

(b) *In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense.*

(c) *Notwithstanding the foregoing, evidence of diminished capacity or of a mental disorder may be considered by the court only at the time of sentencing or other disposition or commitment.*

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

SEC. 5. Habitual Criminals. Section 667 is added to the Penal Code, to read:

667. (a) *Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.*

(b) *This section shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this section to apply.*

(c) *The Legislature may increase the length of the enhancement of sentence provided in this section by a statute passed by majority vote of each house thereof.*

(d) *As used in this section "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.*

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

SEC. 6. Victim's Statements; Public Safety Determination.

(a) *Section 1191.1 is added to the Penal Code, to read: 1191.1 The victim of any crime, or the next of kin of the victim if the victim has died, has the right to attend all sentencing proceedings under this chapter and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.*

The victim or next of kin has the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his or her views concerning the crime, the person responsible, and the need for restitution. The court in imposing sentence shall consider

Continued on page 56

Arguments in Favor of Proposition 8

It is time for the people to take decisive action against violent crime. For too long our courts and the professional politicians in Sacramento have demonstrated more concern with the rights of criminals than with the rights of innocent victims. This trend must be reversed. By voting "yes" on the Victims' Bill of Rights you will restore balance to the rules governing the use of evidence against criminals, you will limit the ability of violent criminals to hide behind the insanity defense, and you will give us a tool to stop extremely dangerous offenders from being released on bail to commit more violent crimes. Your action is as vital and necessary today as it was in 1978 when I urged Californians to take property taxes into their own hands and pass Proposition 13. If you believe as I do that the first responsibility of our criminal justice system is to protect the innocent, then I urge you to vote "yes" on Proposition 8.

MIKE CURB
Lieutenant Governor

Crime has increased to an absolutely intolerable level.

While criminals murder, rape, rob and steal, victims must install new locks, bolts, bars and alarm systems in their homes and businesses. Many buy tear gas and guns for self-protection. **FREE PEOPLE SHOULD NOT HAVE TO LIVE IN FEAR.**

Yet, higher courts of this state have created additional rights for the criminally accused and placed more restrictions on law enforcement officers. This proposition will overcome some of the adverse decisions by our higher courts.

THIS MEASURE CREATES RIGHTS FOR THE VICTIMS OF VIOLENT CRIMES. It enacts new laws that those of us in law enforcement have sought from the Legislature without success.

While there are more people going to state prison than there were three years ago, only 5.5 percent of those persons *arrested* for felonies are sent to state prison. Of those *convicted* of felonies, one-third go to state prison and the remaining two-thirds are back in the community in a relatively short period of time.

THERE IS ABSOLUTELY NO QUESTION THAT THE PASSAGE OF THIS PROPOSITION WILL RESULT IN MORE CRIMINAL CONVICTIONS, MORE CRIMINALS BEING SENTENCED TO STATE PRISON, AND MORE PROTECTION FOR THE LAW-ABIDING CITIZENRY.

IF YOU FAVOR INCREASED PUBLIC SAFETY, VOTE YES ON PROPOSITION 8.

GEORGE DEUKMEJIAN
Attorney General

Why is it that the Legislature doesn't start getting serious about a problem until we, the people, go out and qualify an initiative?

Four years ago it was Proposition 13, which I coauthored, to cut skyrocketing property taxes.

A year later we had to go to the initiative process to place a lid on government spending. That effort, the Gann Spending Limitation Initiative, was carried with a landslide 75 percent of the vote.

Today it is the forgotten victims of violent crime that the Legislature has so callously ignored. Again, it is up to the people to bring about reasonable and meaningful reform.

Your "YES" vote on Proposition 8 will restore victims' rights and help bring violent crime under control.

PAUL GANN
Proponent, Victims' Bill of Rights

Rebuttal to Argument in Favor of Proposition 8

WHY DON'T THE POLITICIANS SUPPORTING PROPOSITION 8 TELL YOU WHAT IT REALLY DOES? Look closely at their arguments. They are simply political slogans and anticrime propaganda.

Every responsible citizen opposes crime, but we should also be very **HESITANT** to make **RADICAL** changes in our Constitution.

Yet Proposition 8 does just that . . . it needlessly reduces your personal liberties . . . and clearly harms true efforts to fight crime.

CONSIDER THESE EFFECTS OF PROPOSITION 8:

Takes away everyone's right to bail. (Compare Proposition 4, which targets only violent felons.)

Allows strip searches of minor traffic offenders.

Condone the use of wiretapping and seizure of your telephone and credit records without a warrant.

Permits spying on you in a public restroom.

Either Proposition 8 takes away your rights, or it is unconstitutional . . . in which case *valid criminal convictions will be thrown out.*

The other reason they say nothing specific is that **MUCH OF PROPOSITION 8 IS ALREADY LAW.** These laws:

Send mentally disordered sex-offenders to prison.

Eliminate the diminished capacity defense.

Provide life sentences for habitual criminals.

Guarantee victim input.

Place controls on plea bargaining.

Restrict bail for violent felons (Proposition 4).

Proposition 8 will *undermine these new laws* by imposing its confusing language on top of clear, well-thought-out reforms.

Proposition 8 is the kind of abuse of the initiative process by political candidates which should be condemned. If you care about your privacy . . . and especially if you care about effective, responsible law enforcement . . . **VOTE NO ON PROPOSITION 8.**

RICHARD L. GILBERT
District Attorney, Yolo County

STANLEY M. RODEN
District Attorney, Santa Barbara County

TERRY GOGGIN
*Member of the Assembly, 66th District
Chairman, Committee on Criminal Justice*

Argument Against Proposition 8

You're afraid of crime—and you have the right to be.

If Proposition 8 would end crime, we would be the first to urge you to vote for it.

But Proposition 8 is a hoax . . . there is no other way to describe it.

Some ambitious politicians may think this ill-conceived measure helps them. It will certainly help keep an army of appellate lawyers fully employed . . .

But it will not reduce crime, help victims, or get dangerous criminals off the streets.

As professionals, charged with the responsibility of controlling crime and prosecuting criminals . . . we ask YOU to PLEASE VOTE NO on PROPOSITION 8.

Proposition 8 is so badly written *it mangles* nearly every aspect of the criminal justice system it touches.

READ the PROBLEMS it will cause:

UNCONSTITUTIONAL INITIATIVE TAKES CONVICTED KILLERS OFF DEATH ROW

Even some of Proposition 8's supporters agree it may be unconstitutional. But unconstitutional laws cause sentences to be overturned. Thirty convicted killers were recently taken off death row because of one unconstitutional line in the 1978 Death Penalty Initiative.

CONVICING PEOPLE LIKE THE "FREEWAY KILLER" NEARLY IMPOSSIBLE

Proposition 8 seeks to stop plea bargaining. Its wording, however, would take away law enforcement's ability to negotiate with criminals to get them to testify against each other . . . This is how the "Freeway Killer" was convicted. It is how law enforcement fights organized crime and gang violence.

FREES DEFENSE LAWYERS TO SMEAR POLICE WHO TESTIFY IN COURT

Under current law, a defense lawyer cannot attack the character of a police witness. If Proposition 8 passes he could.

REQUIRES MILLIONS OF DOLLARS IN NEW COURT PROCEDURES—BUT NO MONEY TO PAY FOR THEM

Look at the cost of Proposition 8 at the top of this measure. Why is it so expensive?

A major share is for extra court hearings and elaborate new red tape in every criminal case—most of which are misdemeanors. This will require more courts, judges, clerks, and probation officers.

Proposition 8 does not provide one cent to pay for these things.

COURTS IN CHARGE OF PUBLIC SCHOOLS

Nobody knows what the so-called "safe schools" section means. The likely result of this provision is constant court battles over compliance. This will no doubt lead to judges running some of our schools. It also could give children the constitutional right to refuse to attend school.

VICTIM RESTITUTION—A MEANINGLESS PROMISE

What good is a right to restitution when so many victims are harmed by criminals who can't pay? (Ever been hit by an uninsured motorist?) Besides, victims already have the right to collect from criminals who can pay.

PROPOSITION 8—A POLITICAL PLOY

As professionals, we know our criminal justice system needs carefully written, tough, constitutional laws and procedures.

Proposition 8 is none of these. It makes it harder to convict criminals, will lead to endless appeals, and will create chaos in the legal system.

It may be good politics, but it is bad law.

PLEASE, VOTE NO ON PROPOSITION 8.

RICHARD L. GILBERT

District Attorney, Yolo County

STANLEY M. RODEN

District Attorney, Santa Barbara County

TERRY GOGGIN

*Member of the Assembly, 66th District
Chairman, Committee on Criminal Justice*

Rebuttal to Argument Against Proposition 8

LAW ENFORCEMENT SUPPORTS PROPOSITION 8

Proposition 8 has been endorsed by more than 250 police chiefs, sheriffs and district attorneys. It has the support of more than 30,000 rank-and-file police officers.

Senior Assistant Attorney General George Nicholson, a chief architect of the Victims' Bill of Rights and a former murder prosecutor, has called Proposition 8 "the most effective anticrime program ever proposed to help the forgotten victims of crime."

ANTICRIME LEGISLATIVE LEADERS SUPPORT PROPOSITION 8

Proposition 8 coauthor Assemblywoman Carol Hallett says, "A generation of victims have been ignored by our Legislature, thanks to the Assembly Criminal Justice Committee. Proposition 8 takes the handcuffs off the police and puts them on the criminals, where they belong."

THE PEOPLE SUPPORT PROPOSITION 8

Throughout California, hundreds of thousands of your fellow citizens carried and signed petitions to place this vital initiative on the ballot. Many of these people have lost family members or are themselves victims of crime.

But they are not only victims of crime, they are victims of our criminal justice system—the liberal reformers, lenient judges and behavior modification do-gooders who release hardened criminals again and again to victimize the innocent.

It's time to restore justice to the system.

VOTE YES FOR VICTIMS' RIGHTS.

VOTE YES ON PROPOSITION 8

PAUL GANN

Proponent, Victims' Bill of Rights

donee (person receiving the gift). That is, a separate gift tax computation is made for the gifts to each donee, rather than making one computation based on the total value of the gifts from a single donor (the person giving the gift) to all donees. The specific exemptions and rates of tax are the same as under the Inheritance Tax Law.

2. Valuation

For purposes of the Gift Tax Law, the property which is the subject of the gift is valued at its market value on the date of gift. Unlike the Inheritance Tax Law (see Section 4), the Gift Tax Law does not contain a provision for the special use value of real property.

3. Exclusions

Gifts made to the spouse of the donor during the donor's lifetime are excluded from the gift tax. The Gift Tax Law also excludes gifts made to government agencies and charitable organizations and gifts of intangible personal property belonging to a donor who resided in a territory or state of the United States, other than California, at the date of gift. The Gift Tax Law does not provide an exclusion for a gift of insurance, nor does it provide an exclusion for gifts of an interest in a public pension or retirement plan.

The Gift Tax Law does provide a \$3,000 annual exclusion for gifts to each donee. That is, in each year a donor may make gifts of up to \$3,000 to each donee without incurring any gift tax.

4. Gift Tax Returns and Determination of the Tax

Under the Gift Tax Law, the donor is required to file

quarterly with the state a gift tax return reporting the gift or gifts made.

5. Payment of Tax

Both the donor and the donee of a gift are liable for the gift tax, but the donor has primary responsibility for the tax.

The tax becomes delinquent on the last day allowed for filing a return. Any delinquent gift tax accrues interest at the rate of 12 percent per annum until the tax, plus interest, is paid in full.

The Gift Tax Law does not contain provisions for installment payments, nor does it allow for an adjusted rate of interest for late payment of the tax.

6. Penalties

If a gift tax return is not filed when due, it is subject to a penalty equal to 5 percent of the tax owed. Additional penalties are imposed in cases involving such matters as fraud or willful failure to file a return.

7. Interest on Refunds

In the case of overpayment of the gift tax due, interest is allowed on the refund of the excess payment. If the overpayment is due to an error or mistake on the part of the taxpayer, the interest on the refund is computed at a specified rate, not to exceed 7 percent per annum. If the overpayment does not reflect an error or mistake on the part of the taxpayer, interest on the refund is computed at the rate of 12 percent per annum. Interest is allowed from the date on which the payment of the tax would have become delinquent, if not paid, or the date of actual payment, whichever is later.

Proposition 8—Analysis—Continued from page 32

ting a crime to be released without bail upon their written promise to appear in court when required. The failure to appear in court as promised can result in additional criminal charges being filed against the accused.

Court decisions have held that the purpose of bail is to assure that the defendant will appear in court to stand trial, rather than to protect the public's safety.

This measure would amend the State Constitution to give the courts discretion in deciding whether to grant bail. It would, however, continue the prohibition on bail in felony cases punishable by death when the proof of guilt is evident or the presumption of guilt is great.

In addition, the measure would add to the State Constitution a provision requiring the courts—in fixing, reducing, or denying bail or permitting release without bail—to consider the same factors that they now are required by statute to consider in fixing the amount of bail. It would also make protection of the public's safety the primary consideration in bail determinations. Moreover, the measure would prohibit the courts from releasing without bail persons charged with certain felonies.

Finally, the measure would require the court to state for the record its reasons for deciding to (a) grant or

deny bail or (b) release an accused person without bail.

Prior Convictions. The measure would amend the State Constitution to require that information about prior felony convictions be used without limitation to discredit the testimony of a witness, including that of a defendant. Under current law, such information may be used only under limited circumstances.

Longer Prison Terms. Under existing law, a prison sentence can be increased from what it otherwise would be by from one to ten years, depending on the crime, if the convicted person has served prior *prison terms*, and a life sentence can be given to certain repeat offenders. Convictions resulting in probation or commitment to the Youth Authority generally are not considered for the purpose of increasing sentences, and there are certain limitations on the overall length of sentences.

This measure includes two provisions that would increase prison sentences for persons convicted of specified felonies. First, upon a second or subsequent conviction for one of these felonies, the defendant could receive, on top of his or her sentence, an *additional* five-year prison term for each such prior conviction, regardless of the sentence imposed for the prior conviction. This provision would not apply in cases where other provisions of law would result in even longer pris-

on terms. Second, any prior felony conviction could be used without limitation in calculating longer prison terms.

Defenses of Diminished Capacity and Insanity. The measure would prohibit the use of evidence concerning a defendant's intoxication, trauma, mental illness, disease, or defect for the purpose of proving or contesting whether a defendant had a certain state of mind in connection with the commission of a crime. Legislation enacted in 1981 significantly limited use of this type of evidence.

This measure would provide that in order to be found not guilty by reason of insanity a defendant must prove that he or she (1) was incapable of knowing or understanding the nature and quality of his or her actions and (2) was incapable of distinguishing right from wrong at the time of the crime. These provisions could increase the difficulty of proving that a person is not guilty by reason of insanity.

If this measure is approved, evidence of diminished mental capacity or a mental disorder could be considered at the time of sentencing.

Victim Statements. Under existing law, statements of victims or next of kin are requested for various reports which are submitted to the court. In many cases, parole boards are not required to notify victims or next of kin about hearings.

This measure would require that the victims of any crimes, or the next of kin of the victims if the victims have died, be notified of (1) the sentencing hearing and (2) any parole hearing (if they so request) involving persons sentenced to state prison or the Youth Authority. During the hearings, the victim, next of kin, or his or her attorney would have the right to make statements to the court or hearing board. In addition, this measure would require the court or hearing board to state whether the convicted person would pose a threat to public safety if he or she were released on probation or parole.

Plea Bargaining. The measure would place restrictions on plea bargaining in cases involving specified felonies and offenses of driving while under the influence of an intoxicating substance. "Plea bargaining" is a term used to describe situations in which the defendant agrees to plead guilty in exchange for a reduced charge or sentence.

Exclusion of Certain Persons from Sentencing to the Youth Authority. Under current law, persons who commit certain sex crimes at the age of 18 years or older and some other youthful offenders are not sent to the Youth Authority. This measure would prohibit sending to the Youth Authority persons who were 18 years of age or older at the time they committed murder, rape, or other specified felonies. As a result, they would be sentenced to state prison or local jails, or receive probation.

Mentally Disordered Sex Offenders. This measure contains a provision which would have changed the law concerning the treatment of certain sex offenders. However, legislation enacted in 1981 achieved the same purpose. Consequently, this provision has no effect.

Fiscal Effect:

The net fiscal effect of this measure cannot be determined with any degree of certainty. This is because the fiscal effect would depend on many factors that cannot be predicted. Specifically, it would depend on:

- how various provisions are implemented by the Legislature, local governments, and school districts,
- how the rights established by the measure are enforced by the courts,
- how many persons are incarcerated in state prison or detained in county jails for longer periods of time,
- how the various provisions affect criminal behavior (that is, to what extent the measure has a deterrent effect), and
- how the criminal justice system reacts to the measure.

We conclude, however, that approval of the measure would result in major state and local costs. This is because the measure, taken as a whole, could:

- increase local administration costs (for example, there would be a cost to implement the restitution procedures and to notify victims of sentencing hearings),
- increase state administrative costs (for example, there would be a cost to notify victims of parole hearings),
- increase claims against the state and local governments relating to enforcement of the right to safe schools,
- increase school security costs to provide safe schools,
- increase the cost of operating county jails by increasing the jail populations (for example, more persons accused of crimes could be denied bail in order to assure public safety and more persons could be detained in jail while awaiting trial due to the elimination of plea bargaining),
- increase court costs (for example, costs could increase due to more extensive bail hearings and the elimination of plea bargaining), and
- increase the cost of operating the state's prison system by increasing the prison population (for example, by increasing terms for certain repeat offenders). Based on various assumptions, the Department of Corrections estimates that the provisions that would result in longer prison terms for repeat offenders would lengthen the terms of at least 1,200 persons each year. The department states that this estimate may be low for several reasons. In addition, the measure's impact on conviction and sentencing trends and patterns cannot be predicted. As a result of these uncertainties, we cannot estimate how many persons would serve longer prison terms if this measure is approved. If, however, 1,200 persons per year were to receive the new sentences instead of the sentences provided under current law, annual state prison operating costs would increase by about \$47 million (in 1982-83 prices) by the mid-1990s. This cost estimate assumes that the state's prison population would be about 3,600 higher than under existing law. In addition,

the state might need to spend up to \$280 million (in 1982 prices) to construct facilities to house these additional prisoners. The construction cost estimate assumes that existing standards for prisons would be followed when the new facilities were constructed, and that the custody levels (for example, maximum

security) required for the additional inmates would match current housing patterns. To the extent that some of the additional prisoners could be housed by crowding existing facilities, both the estimated operating and construction costs could be reduced.

Proposition 8—Text—Continued from page 33

the statements of victims and next of kin made pursuant to this section and shall state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation.

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

(b) Section 3043 is added to the Penal Code, to read:

3043. Upon request, notice of any hearing to review or consider the parole eligibility or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin 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.

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

(c) Section 1767 is added to the Welfare and Institutions Code, to read:

1767. Upon request, written notice of any hearing to consider the release on parole of any person under the control of the Youth Authority for the commission of a crime or committed to the authority as a person described in Section 602 shall be sent by the Youthful Offender Parole Board at least 30 days before the hearing to any victim of a crime committed by the person, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin 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. The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 7. Limitation of Plea Bargaining. Section 1192.7 is added to the Penal Code, to read:

1192.7 (a) Plea bargaining in any case in which the indictment or information charges any serious felony or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the de-

fendant agrees to plead guilty or *nolo contendere*, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, or threat of great bodily harm; (5) oral copulation by force, violence, duress, menace, or threat of great bodily harm; (6) lewd acts on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of a residence; (19) robbery; (20) kidnapping; (21) taking of a hostage by an inmate of a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering or providing heroin, cocaine, or phencyclidine (PCP) to a minor; (25) any attempt to commit a crime listed in this subdivision other than an assault.

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

SEC. 8. Sentencing. Section 1732.5 is added to the Welfare and Institutions Code, to read:

1732.5 Notwithstanding any other provision of law, no person convicted of murder, rape or any other serious felony, as defined in Section 1192.7 of the Penal Code, committed when he or she was 18 years of age or older shall be committed to Youth Authority.

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

SEC. 9. Mentally Disordered Sex Offenders. Section 6331 is added to the Welfare and Institutions Code, to read:

6331. This article shall become inoperative the day after the election at which the electors adopt this section, except that the article shall continue to apply in all respects to those already committed under its provisions.

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

SEC. 10. If any section, party, clause, or phrase of this measure or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

C A L I F O R N I A

GENERAL ELECTION

TUESDAY, NOVEMBER 4, 2008

★ OFFICIAL VOTER INFORMATION GUIDE ★

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I, Debra Bowen, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 4, 2008, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, on this 11th day of August, 2008.

Debra Bowen



Debra Bowen
Secretary of State

**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

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 ⅔ 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

PROP 9 CRIMINAL JUSTICE SYSTEM. VICTIMS' RIGHTS. PAROLE. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

★ 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 RECOURSE . . .** 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 I 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. That 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 the 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 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.

(d) (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.

(e) (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 3041, 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 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.

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(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