No. S232642

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SACRAMENTO,

Respondent.

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

Real Parties in Interest.

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

---

APPENDIX [VOL. I OF II] TO EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY AND/OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

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

Robin B. Johansen, State Bar No. 79084
James C. Harrison, State Bar No. 161958
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201
Email: rjohansen@rjp.com

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

No. _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO,

Respondent.

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

Real Parties in Interest.

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

---

APPENDIX [VOL. I OF II] TO EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY AND/OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

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

Robin B. Johansen, State Bar No. 79084
James C. Harrison, State Bar No. 161958
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201
Email: rjohansen@rjp.com

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

APPENDIX INDEX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
1	2/11/16	Verified Petition for Writ of Mandate	Vol. I, APP001
1	2/11/16	• Exhibit A to Verified Petition for Writ of Mandate: Real Parties in Interest's December 22, 2015 submission to Attorney General's Office of "The Justice and Rehabilitation Act"	Vol. I, APP014
1	2/11/16	• Exhibit B to Verified Petition for Writ of Mandate: Real Party in Interest's amended initiative measure "The Public Safety and Rehabilitation Act of 2016" submitted to the Attorney General's Office on January 26, 2016	Vol. I, APP042
1	2/11/16	• Exhibit C to Verified Petition for Writ of Mandate: California Bill Analysis, Senate Floor, 2013-2014 Regular Session regarding Senate Bill 1253, August 22, 2014	Vol. I, APP057
2	2/17/16	Memorandum of Points and Authorities in Support of Verified Petition for Writ of Mandate	Vol. I, APP061
3	2/17/16	Declaration of Thomas W. Hiltachk in Support of Verified Petition for Writ of Mandate	Vol. I, APP083
3	2/17/16	• Exhibit A to the Declaration of Thomas W. Hiltachk: Article titled "How Jerry Brown's parole initiative came together"	Vol. I, APP087
4	2/17/16	Petitioners' Request for Judicial Notice in Support of Verified Petition for Writ of Mandate	Vol. I, APP090
4	2/17/16	• Exhibit A to Petitioners' Request for Judicial Notice: Real Parties in Interest's December 22, 2015 submission to Attorney General's Office of "The Justice and Rehabilitation Act"	Vol. I, APP095

APPENDIX INDEX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
4	2/17/16	• Exhibit B to Petitioners' Request for Judicial Notice: Real Party in Interest's amended initiative measure "The Public Safety and Rehabilitation Act of 2016" submitted to the Attorney General's Office on January 26, 2016	Vol. I, APP123
4	2/17/16	• Exhibit C to Petitioners' Request for Judicial Notice: California Bill Analysis, Senate Floor, 2013-2014 Regular Session regarding Senate Bill 1253, August 22, 2014	Vol. I, APP138
4	2/17/16	• Exhibit D to Petitioners' Request for Judicial Notice: California Bill Analysis, Assembly Committee on Elections and Redistricting, June 17, 2014	Vol. I, APP142
4	2/17/16	• Exhibit E to Petitioners' Request for Judicial Notice: Letter from California Common Cause dated March 14, 2014 supporting SB 1253	Vol. I, APP155
5	2/22/16	Verified Answer of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP156
6	2/22/16	Opposition of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP167
7	2/22/16	Declaration of Harry Berezin in Support of Opposition of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP189
8	2/22/16	Declaration of Scott Budnick in Support of Opposition of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP193
9	2/22/16	Declaration of Elizabeth Calvin in Support of Opposition of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP199
10	2/22/16	Declaration of Fred Kimball in Support of Opposition of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP204

APPENDIX INDEX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
10	2/22/16	• Exhibit A to the Declaration of Fred Kimball: Excerpts from the Secretary of State's 2016 Statewide Initiative Guide, Appendix A: Suggested Deadlines to Qualify Initiatives	Vol. II, APP208
11	2/22/16	Declaration of Margaret R. Prinzing in Support of Opposition of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP217
11	2/22/16	• Exhibit A to the Declaration of Margaret Prinzing: Screenshot of Attorney General's Active Initiative webpage	Vol. II, APP220
11	2/22/16	• Exhibit B to the Declaration of Margaret Prinzing: Cover letter re Submission of Amendment to Statewide Initiative Measure – The Justice and Rehabilitation Act	Vol. II, APP221
12	2/22/16	Request for Judicial Notice; Declaration of Michael Narciso in Support of Opposition of Real Parties in Interest to Verified Petition for Writ of Mandate	Vol. II, APP225
12	2/22/16	• Exhibit A to the Declaration of Michael Narciso: Senate Bill No. 1253, as amended in Assembly on July 1, 2014	Vol. II, APP228
12	2/22/16	• Exhibit B to the Declaration of Michael Narciso: Senate Bill No. 1253, as introduced on February 20, 2014	Vol. II, APP246
12	2/22/16	• Exhibit C to the Declaration of Michael Narciso: Senate Bill No. 1253, as amended in Assembly on August 4, 2014	Vol. II, APP260
13	2/22/16	Attorney General's Opposition to Verified Petition for Writ of Mandate	Vol. II, APP283
14	2/23/16	Memorandum of Points and Authorities in Reply to Opposition	Vol. II, APP304
15	2/24/16	Order and Judgment After Hearing on Petition for Writ of Mandate	Vol. II, APP313
16	2/24/16	Peremptory Writ of Mandate	Vol. II, APP315

APPENDIX INDEX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
17	2/24/16	Declaration of James C. Harrison	Vol. II, APP317

Thomas W. Hiltachk (SBN 131215)
tomhl@bmhlaw.com
Brian T. Hildreth (SBN 214131)
bhildreth@bmhlaw.com
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 442-7757
Facsimile: (916) 442-7759

Attorneys for Petitioners
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, and ANNE MARIE SCHUBERT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, and ANNE MARIE SCHUBERT, an individual and in her personal capacity,

Petitioners,

v.

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA HARRIS, in her official capacity only; and DOES I-X, inclusive,

Respondents.

MARGARET R. PRINZING and HARRY BEREZIN,

Real Parties In Interest.

CASE NO.

VERIFIED PETITION FOR WRIT OF MANDATE [CAL. ELEC. CODE, §§ 9002 and 13314; CCP, §§ 1021.5, 1085].

IMMEDIATE ACTION REQUIRED: ELECTION LAW MATTER ENTITLED TO CALENDAR PREFERENCE PURSUANT TO C.C.P. § 35, ELECTIONS CODE § 13314

INTRODUCTION

1. Unless prohibited by this Court, Respondent Attorney General Harris ("Respondent") will soon issue a title and summary for an initiative measure submitted to her office on January 25, 2016 (the self-titled "Public Safety and Rehabilitation Act of 2016"): 1) without providing the statutorily required 30-day "public review period;" 2) without providing the Legislative Analyst Office ("LAO") the statutorily permitted 50-day period to examine the state

and local government fiscal impacts of the initiative (concluding on February 10, 2016); and 3) without providing herself the statutorily permitted 65 day period to prepare a title and summary of the chief purpose and points of the measure.

2. Instead, Respondent will issue a title and summary for the January 25, 2016 initiative on or before February 25, 2016, after having provided NO public review period, giving the LAO just 16 days to analyze an extremely complex initiative, and providing herself just 31 days to prepare a title and summary for the proposed initiative. It should be noted that as of the date this petition was filed, the LAO had already missed the deadline to transmit its fiscal analysis to the Attorney General.

3. These errors were caused by Respondent's decision to accept the January 25, 2016 submission by Real Parties as an "amendment" to Real Parties' prior initiative filed on December 22, 2015 (the self-titled "The Justice and Rehabilitation Act"). It is this error Petitioners challenge and seek to correct. In short, the January 25, 2016 is not an amendment of the prior initiative draft – it is a completely different and *new* initiative.

4. This matter is complicated by the fact that Real Parties are apparently now acting as agents of Governor Jerry Brown. Shortly after the January 25, 2016 filing, the Governor publicly announced that he was going to propose a ballot measure to eliminate over 40 years of determinate sentencing law and several sentencing and parole laws enacted by the voters during the same time period. Petitioners are not aware that Governor Brown had any connection or role with Real Parties' December 22, 2015 submission.

5. In addition to the public harm caused by this error if not immediately corrected, Respondent will have allowed Real Parties to "cut in line" ahead of five other proposed initiatives filed after December 22, 2015 but prior to January 25, 2016.

6. Prior to January 1, 2015, once a proponent submitted the text of a proposed initiative to the Attorney General's office, the law provided very little opportunity to change or amend the text of the initiative, even to fix typographical errors, grammar mistakes, or more substantive legal defects discovered during the Attorney General and LAO review. Moreover, the

///

law provided no period for the public to review and comment on a proposed initiative measure to assist in the discovery of such mistakes.

7. In 2014, the Legislature passed, and the Governor signed, Chapter 697 which made several changes to the initiative qualification process. Principal among these changes was the creation of a 30-day public inspection period and authorization to allow the proponent to "submit amendments to the measure that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed." (Elec. Code § 9002(b).) Such amendments could be filed any time, up to and including 5 days after the close of the public inspection period.

8. In addition, the LAO is given a full 50-days to study the fiscal impact of the proposed initiative measure. In this regard, the "germaneness" requirement is important, because the LAO will have commenced its analysis of the original filing. A late-filed amendment allows the LAO only 15 or more days to analyze the amendments to determine if they change the fiscal impact of the measure. Lastly, the Attorney General is required to issue the title and summary, including a summary of the LAO's fiscal impact analysis within 15 days following receipt of the LAO's review. In total, the entire title and summary/fiscal analysis process must be concluded within 65 calendar days.

9. The clear purpose of the changes to Elections Code section 9002 was to allow proponents of an initiative measure to correct errors and consider and implement public comments into the originally filed initiative. The intent of the statutory changes was not to allow a proponent to "gut-and-amend" a previously filed measure with a complete rewrite and thereby short-cut the analysis and review process.

10. There can be no plausible legal argument that the January 25, 2016 submission is "reasonably germane to the theme, purpose, or subject" of the initiative measure submitted on December 22, 2015. As indicated more fully herein, real parties' original filing was a statutory measure that dealt with the procedure for prosecuting a juvenile as an adult. The subsequent filing proposes to add a Constitutional Amendment, which effectively repeals nearly four decades

///

of determinate sentencing law, several voter-approved initiatives, and would permit the granting of parole to tens of thousands of current adult felons serving terms in state prison.

11. Real Parties' may unquestionably attempt to qualify their new measure for the statewide ballot. However, they must comply with the requirements of Elections Code like everyone else. The January 25, 2016 filing must be treated as a new filing and all the procedures and requirements that follow from that date should be immediately instituted.

12. Additionally, Respondent Attorney General may unquestionably issue a circulating title and summary for real parties' originally-filed initiative and, after the process has played itself out, a circulating title and summary for Real Parties' newly filed initiative.

13. This Court should act immediately to prohibit the Attorney General from allowing Real Parties' new measure from unlawfully jumping ahead in line, which has the effect of denying the public its statutory right of review, and depriving the LAO with the full allotted time to analyze the fiscal impact of the proposed initiative. Real parties must start their attempt to qualify its measure at the same place all measures start under the Elections Code.

PARTIES

14. Petitioner, ANNE MARIE SCHUBERT, is a citizen of the State of California and a registered voter and taxpayer in Sacramento County. Ms. Shubert is the elected District Attorney of the County of Sacramento. Ms. Shubert brings this action in her personal capacity only.

15. Petitioner CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION is an incorporated nonprofit association recognized as a mutual benefit corporation by the State of California and recognized as an IRC 501(c)(6) nonprofit association by the Internal Revenue Service. Petitioner CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION is domiciled in California and maintains its headquarters in Sacramento.

16. Respondent KAMALA HARRIS is the ATTORNEY GENERAL of California. The Elections Code directs the Attorney General to accept new ballot initiative measures and reasonable germane amendments thereto, and thereafter prepare a circulation title and summary

(not to exceed 100 words) describing the purpose and effect of each ballot measure. (Elec. Code, § 9006.) The circulation title and summary is displayed on each section of a signature petition circulated by initiative proponents. The Attorney General is named in her official capacity only.

17. Real Party In Interest MARGARET R. PRINZING is a named proponent of the Public Safety and Rehabilitation Act of 2016. On information and belief, Real Party In Interest is a registered voter and resident of the State of California.

18. Real Party In Interest HARRY BEREZIN is a named proponent of the Public Safety and Rehabilitation Act of 2016. On information and belief, Real Party In Interest is a registered voter and resident of the State of California.

19. The true identities and capacities of Respondents DOES I through X are unknown to Petitioners at this time. When their identities and capacities have been ascertained, Petitioners will seek leave to amend this pleading to set forth that information.

JURISDICTION AND VENUE

20. Petitioners bring this action as a petition for writ of mandate pursuant to Elections Code section 13314 and Code of Civil Procedure sections 1085 and 1086. Section 13314 provides that petitioners who are electors of the State may seek a writ of mandate for any error in neglect of official duty that has occurred or is about to occur. Such an action has priority over all other civil matters. Sections 1085 and 1086 provide that petitioners may seek a writ of prohibition/mandate to restrain respondents from taking any official action violation of law. Pursuant to Elections Code section 13314, the exclusive venue for this action is Sacramento County. (Elec. Code, § 13314(b)(3).)

21. Code of Civil Procedure section 1086 provides that when a verified petition is submitted by a party "beneficially interested," a writ "must issue where there is not a plain, adequate speedy remedy in the ordinary course of law." Petitioners are registered voters of the State of California and are beneficially interested in this matter.

22. Petitioner is informed and believes, and on that basis alleges, that issuance of a writ requested herein will not interfere with the conduct of any election.

///

FACTUAL ALLEGATIONS

23. On December 22, 2015, Real Parties In Interest submitted the "The Justice and Rehabilitation Act" to the Attorney General's Office pursuant to Elections Code section 9001 requesting a circulating title and summary. Under section 9002, all proposed statewide initiative measures are posted by the Attorney General's Office for public review for a period of 30 days. The intention of the 30-day public review period is to give members of the public an opportunity to comment on proposed measures.

24. When it was filed in December, "The Justice and Rehabilitation Act" was designated by the Attorney General as measure number 15-0121. (See **Exhibit A** hereto and incorporated herein by this reference.)

25. The initial version of the initiative measure primarily sought to eliminate a prosecutor's discretion to directly file a case involving a juvenile in adult court and eliminated all presumptions that serious/violent offenders are unfit to be prosecuted in juvenile court. These statutory laws were a significant part of Proposition 21, enacted by the voters in 2000.

26. However, on January 25, 2016 – after the close of the public review period – Real Parties In Interest filed a purported *amendment* to initiative number 15-0121. This time the measure was titled the "Public Safety and Rehabilitation Act of 2016." (See **Exhibit B** hereto and incorporated herein by this reference.)

27. More than just a change in name, however, the new measure changed entirely the purpose and intent of the prior measure. Now, instead of focusing on whether to charge juveniles as adults at the outset of a criminal action, the new language, proposing a Constitutional amendment, effectively repeals nearly 40 years of determinant sentencing law, and authorizes parole hearings for an estimated 30,000 - 40,000 felons serving their sentences in state prison.

28. For example:

- The new Constitutional language in the measure now permits adult inmates sentenced to non-violent felony offenses to be eligible for parole consideration after completion of only the term of their primary offense.

///

- The new proposed measure also now effectively repeals Proposition 8, the Victims' Bill of Rights, enacted by the voters in June 1982. Proposition 8 amended the Constitution to provide, "Any prior felony conviction of any person in any criminal proceeding ... shall subsequently be used without limitation for purposes of ... enhancement of sentence in any criminal proceeding." (Cal. Const., art. I, § 28(f)), renumbered by Prop. 9 in 2008 as art. I, § 28(f)(4).) The proposed initiative also will exclude prior convictions in making prisoners eligible for parole consideration. In other words, criminal defendants whose sentences were increased for these enhancements will be eligible for parole at the same time as defendants who do not have any enhancements.
- The new language in the measure now calls for excluding consecutive sentences from the full term of the primary offense for adult felons. Adult felons who commit multiple crimes against multiple victims will be eligible for early release at the same time as inmates who commit only one crime against one victim.
- Under the newly amended language "alternative sentences" involving increased punishment like the Three Strikes law will now be excluded from the full term of the primary offense for many offenders. Thus, repeat serious and violent offenders will now be eligible for early release at the same time as inmates who have no criminal histories.
- The proposed amended initiative will now give the California Department of Corrections and Rehabilitation (CDCR) unilateral and unlimited authority to award credits to all inmates, regardless of their charges or sentences, for good behavior and approved rehabilitative or educational achievements. The Penal Code currently provides that most prisoners serve only 50 percent of their sentences.
- The proposed amended measure now also effectively repeals Marsy's Law (Proposition 9), the Victims' Bill of Rights Act of 2008. Marsy's Law amended the California Constitution, to provide:

///

> 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 court's 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.

(Cal. Const., art. I, § 28(f)(5), emphasis added.)

Thus, the newly amended measure does exactly what the voters prohibited in Marsy's Law. It enacts early release policies intended to alleviate prison overcrowding.

- The newly amended initiative language also essentially repeals Proposition 184, the Three-Strikes law. Because the amended language appears to treat two strikes and three strikes as "alternative sentences," and allow parole consideration after service of the new crime without respect to the prior convictions, it will conflict with, and essentially repeal, Proposition 184 which was passed in 1994.
- The new initiative language also effectively repeals the so-called "10-20-Life" law. Penal Code section 12022.53, the 10-20-Life law was overwhelmingly passed by the legislature in 1997 to combat gun violence. The 10-20-Life law mandates enhancements in certain serious offenses of 10 years for the use of a gun, 20 years for the intentional discharge of a gun, and life for the discharge of a gun that results in death or great bodily injury. However, because the newly amended initiative excludes consideration of enhancements in determining parole consideration, if a firearm allegation is not used to make an offense a violent offense, the 10-20-Life enhancement will be disregarded.

29. The new language is for all intents and purposes a new proposed measure unlawfully camouflaged as an amendment to an existing measure. The new version of the initiative fails to meet the standard for amendments under law that requires any amendment to a previously-filed measure to be "reasonably germane to the theme, purpose, or subject of the initiative measure as it was originally proposed." (Elec. Code, § 9002(b) (emphasis added).)

30. As further indication that the purported amendment exceeded the statutory authority to amend a filed ballot measure, the LAO missed its own deadline to issue a fiscal analysis, undoubtedly because of the sweeping and fundamental changes to the initially-filed measure. Elections Code section 9004 requires the LAO to issue its analysis within 50 days after the initial filing of the proposed initiative measure. The 50-day LAO deadline was Wednesday, February 10, 2016.

31. This Court should order Respondent ATTORNEY GENERAL to reject the January 25, 2016 amendment to the measure as unlawful and not permitted by statute.

32. Moreover, unless prohibited from doing so, Respondent ATTORNEY GENERAL will issue within approximately the next 15 days the circulation title and summary to the proponents of the illegally amended measure number 15-0121. This will allow the proponents of the measure to circulate an unlawfully authorized initiative that has not completed the statutory requirement to which all new initiative measures must adhere. Petitioners are thus compelled to file the present Verified Petition for Writ of Mandate.

FIRST CAUSE OF ACTION

(Writ of Mandate: Prohibiting Official's Error And Neglect Of Duty)

33. Petitioner incorporates by reference each and every allegation made in Paragraphs 1 through 32 of this Petition as though fully set forth herein.

34. Elections Code section 9002(b) provides in part:

> During the public review period, the proponents of the proposed initiative measure may submit amendments to the measure that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed.

35. Elections Code section 9002 was amended to its present form in 2014 by Senate Bill 1253 (Steinberg, *et al.*). In considering the measure, the State Senate distributed an analysis of the bill that clearly summarized the legislative intent of the law:

> According to the author: ... The current 150 days to gather signature does not provide enough time for public input or changes to the initiative language. This bill extends the time allowed to

> gather signatures and establishes a prequalification process. The prequalification process includes the ability to amend an initiative before it appears on the ballot *as long as the changes are consistent with the original intent*. ... Presently, there is not a sufficient review process of initiatives by the *public or the Legislature where either is able to provide greater input and suggest amendments or correct flaws* before the measure is printed on the ballot. Implementing a better public review process before the title and summary process by the AG and allowing the Legislature to hold a hearing after 25% of signatures are collected helps address this deficiency. ***

(California Bill Analysis, Senate Floor, 2013-2014 Regular Session, Senate Bill 1253 (emphasis added) (see **Exhibit C** hereto and incorporated herein by this reference).)

36. Instead of accepting Real Parties In Interest's purported amendment, Respondent ATTORNEY GENERAL's should have rejected the amendment as not "reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed."

37. Petitioners have a clear, present and substantial right to have Respondent ATTORNEY GENERAL reject the amended measure on the basis that the amendments failed to comply with applicable law.

38. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law other than the relief sought in this Petition because, unless ordered to reject the purported January 25, 2016 amendment of them measure, Respondent will continue to process the new language measure as a valid amendment. Respondent's acceptance of the amendment will cause injury, not only to Petitioners, but also to the other qualified voters in the State who will not have a meaningful opportunity to participate in the public comment period afforded to for all new measures and who will be compelled to consider an measure that is invalid on the basis that it has not complied with the statuary formalities all new measures must complete before being circulated.

39. Petitioners arc, thus, compelled to file the present Writ of Mandate as provided in Elections Code section 13314 and related provisions enumerated herein.

///

///

///

SECOND CAUSE OF ACTION

(Writ of Mandate: Prohibiting Official's Error And Neglect Of Duty)

40. Petitioner incorporates by reference each and every allegation made in Paragraphs 1 through 39 of this Petition as though fully set forth herein.

41. Petitioners also have a clear, present and substantial right to have Respondent prohibited from issuing a circulation title and summary for the amended measure on the basis that the amendments failed to comply with applicable law.

42. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law other than the relief sought in this Petition because, unless prohibited from doing so, Respondent will issue said circulation title and summary, thus allowing Real Parties In Interest / proponents to commence circulating the improperly authorized measure. This action will cause injury, not only to Petitioners, but also to the other qualified voters of California who will not have had a meaningful opportunity to participate in the public comment period afforded to for all new measures and who will be compelled to consider an measure that is invalid on the basis that it has not complied with the statuary formalities all new measures must complete before being circulated.

43. Petitioners are, thus, compelled to file the present Writ of Mandate as provided in Elections Code section 13314 and related provisions enumerated herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioners, ANNE MARIE SCHUBERT and CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION pray:

1. For an alternative Writ of Mandate ordering Respondent Attorney General Harris, her officers, agents, and all persons acting by, through or in concert with her to forthwith reject Real Parties' January 25, 2016 submission as an amendment to Measure No. 15-0121, or in the alternative, to show cause why she should not be ordered to do so;

///

///

2. For a peremptory Writ of Mandate ordering Respondent Attorney General Harris, her officers, agents, and all persons acting by, through or in concert with her to forthwith reject real parties' January 25, 2016 amendment to Measure No. 15-0121;

3. For an alternative Writ of Mandate prohibiting Respondent Attorney General Harris, her officers, agents, and all persons acting by, through or in concert with her from issuing the circulation title and summary for Measure No. 15-0121 as amended by the purported January 25, 2016 amendment on or before February 25, 2016, to allow for a public review period, and for a full period of time for the LAO to conduct its analysis or in the alternative, to show cause why she should not be ordered to do so;

4. For a peremptory Writ of Mandate prohibiting Respondent Attorney General Harris, her officers, agents, and all persons acting by, through or in concert with her from issuing the circulation title and summary for Measure No. 15-0121 as amended by Real Parties In Interest's purported January 25, 2016 amendment on or before February 25, 2016 to allow for a public review period, and for a full period of time for the LAO to conduct its analysis;

5. For attorneys' fees and costs of this proceeding; and

6. For such other and further equitable relief as this Court may deem just and proper.

DATED: February 11, 2016. Respectfully submitted.

BELL, McANDREWS & HILTACHK, LLP

BY: _____
THOMAS W. HILTACHK
BRIAN T. HILDRETH

Attorneys for Petitioners,
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION and ANNE MARIE SCHUBERT

VERIFICATION

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, ANNE MARIE SCHUBERT, am a Petitioner in this action. I have read the foregoing Verified Petition for Writ of Mandate and know its contents. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

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

Executed on February 11, 2016, at Sacramento, California.

ANNE MARIE SCHUBERT

EXHIBIT A

15-0121

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: mprinzing@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra

Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

December 21, 2015

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Justice and Rehabilitation Act*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "The Justice and Rehabilitation Act." The text of the measure, a check for $200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

Margaret R. Prinzing

Enclosure

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: mprinzing@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra

Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

December 21, 2015

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Justice and Rehabilitation Act*

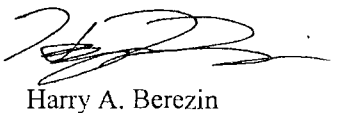
Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "The Justice and Rehabilitation Act." The text of the measure, a check for $200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,



Harry A. Berezin

Enclosure

THE JUSTICE AND REHABILITATION ACT

SECTION 1. Title.

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

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

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

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

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

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

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

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

SEC. 3. Purpose and Intent.

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

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

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

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

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

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

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

SEC. 4. Judicial Transfer Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) Murder.~~

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

~~(3) Robbery.~~

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

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

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

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

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

~~(9) Kidnapping for ransom.~~

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

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

~~(12) Attempted murder.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Murder.

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

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

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

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

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

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

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

(I) Kidnapping for ransom.

(J) Kidnapping for purposes of robbery.

(K) Kidnapping with bodily harm.

(L) Attempted murder.

(M) Assault with a firearm or destructive device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. Judicial Remand Hearing.

Section 1170.17 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 6. Additional Amendments Relating To Transfer.

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

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

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

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

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

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

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

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

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

~~(A) Jeopardy has attached.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1170.19 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

SEC. 7. Juvenile Court Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 8. Parole Hearings.

Section 3051 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 9. Amendment.

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

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

SEC. 10. Severability.

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

SEC. 11. Conflicting Initiatives.

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

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

SEC. 12. Proponent Standing.

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

SEC. 13. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

EXHIBIT B

15-0121 Amdt. # 1

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: mprinzing@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra

Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

January 25, 2016

VIA MESSENGER

RECEIVED

JAN 26 2016

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to Statewide Initiative Measure – The Justice and Rehabilitation Act, No. 15-0121*

Dear Ms. Johansson:

As you know, I am one of the proponents of the proposed statewide initiative, "The Justice and Rehabilitation Act," No. 15-0121. I am enclosing the following documents:

- The amended text of "The Justice and Rehabilitation Act," No. 15-0121;
- A red-line version showing the changes made in the amended text; and
- Signed authorizations from each of the proponents for the submission of the amended text together with their requests that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries or correspondence relative to this proposed initiative as indicated below:

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Thank you for your time and attention to this matter.

Sincerely,

Margaret R. Prinzing

MRP:NL
Enclosures
(00266157)

January 25, 2016

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to The Justice and Rehabilitation Act, No. 15-0121, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

On December 22, 2015, I submitted a proposed statewide initiative titled "The Justice and Rehabilitation Act," No. 15-0121, and submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution.

Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the title and text of the Initiative. As one of the proponents of the initiative, I approve the submission of the amended text to the initiative and I declare that the amendment is reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. I request that the Attorney General prepare a circulating title and summary using the amended language.

Sincerely,

Margaret R. Prinzing

Enclosures
(00266162)

January 25, 2016

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to The Justice and Rehabilitation Act, No. 15-0121, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

On December 22, 2015, I submitted a proposed statewide initiative titled "The Justice and Rehabilitation Act," No. 15-0121, and submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution.

Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the title and text of the Initiative. As one of the proponents of the initiative, I approve the submission of the amended text to the initiative and I declare that the amendment is reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. I request that the Attorney General prepare a circulating title and summary using the amended language.

Sincerely,

Harry Berezin

Enclosures
(00266171)

THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016

SECTION 1. Title.

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

SEC. 2. Purpose and Intent.

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

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

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

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

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

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

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

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

SEC. 4. Judicial Transfer Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Murder.

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

(3) Robbery.

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

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

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

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

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

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. Amendment.

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

SEC. 6. Severability.

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

SEC. 7. Conflicting Initiatives.

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

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

SEC. 8. Proponent Standing.

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

SEC. 9. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

EXHIBIT C

CA B. An., S.B. 1253 Sen., 8/22/2014

California Bill Analysis, Senate Floor, 2013-2014 Regular Session, Senate Bill 1253

August 22, 2014
California Senate
2013-2014 Regular Session

_ -- §SENATE RULES COMMITTEE § SB 1253§ §Office of Senate Floor Analyses § § §1020 N Street, Suite 524 § § §(916) 651-1520 Fax: (916) § § §327-4478 § § -- UNFINISHED BUSINESS

Bill No: SB 1253

Author: Steinberg (D), et al.

Amended: 8/22/14

Vote: 21

SENATE ELECTIONS & CONSTITUTIONAL AMEND. COMM. : 4-1, 4/22/14 AYES: Torres, Hancock, Jackson, Padilla NOES: Anderson

SENATE APPROPRIATIONS COMMITTEE : 5-2, 5/23/14 AYES: De León, Hill, Lara, Padilla, Steinberg NOES: Walters, Gaines

SENATE FLOOR : 29-8, 5/29/14 AYES: Beall, Berryhill, Block, Cannella, Corbett, Correa, De León, DeSaulnier, Evans, Galgiani, Hancock, Hernandez, Hill, Hueso, Huff, Jackson, Lara, Leno, Lieu, Liu, Mitchell, Monning, Padilla, Pavley, Roth, Steinberg, Torres, Wolk, Wyland NOES: Anderson, Fuller, Gaines, Knight, Morrell, Nielsen, Vidak, Walters NO VOTE RECORDED: Calderon, Wright, Yee

ASSEMBLY FLOOR : 55-23, 8/27/14 - See last page for vote

SUBJECT : Initiative measures

SOURCE : California Common Cause League of Women Voters of California CONTINUED

DIGEST : This bill makes several changes to the initiative process including providing a 30-day public review process, extending the timeframe allowed for circulating a petition, and allowing the withdrawal of a petition at any time before the measure qualifies for the ballot; and makes several other changes to the procedures and requirements for placing an initiative petition measure on the ballot.

Assembly Amendments add coauthors; require the Secretary of State (SOS) to identify the date of the next statewide election and, on the 131st day prior to that election, to issue a certificate of qualification certifying that the initiative measure is qualified for the ballot at that election; provide that the initiative measure will be deemed qualified for the ballot for purposes of specified provisions of the California Constitution; clarify proponents of the proposed initiative measure may submit amendments to the measure that further its purposes; require the fiscal estimate to be delivered within 50 days of the date of receipt of the proposed measure by the Attorney General, instead of 25 working days, as specified; add double-jointing language with AB 2219 (Fong), SB 1043 (Torres), and SB 844 (Pavley); add contingent enactment language to avoid implementation problems with SB 1442 (Lara); and make other conforming and technical changes.

ANALYSIS : Existing law: 1.Establishes specific procedures and requirements for placing an initiative petition measure on the ballot. 2.Requires the SOS to transmit copies of an initiative measure and its circulating title and summary to the Senate and the Assembly after the measure is certified to appear on the ballot for consideration by the voters. 3.Requires that each house

of the Legislature assign the initiative measure to its appropriate committees, and that the committees hold joint public hearings on the subject of the proposed measure prior to the date of the election at which the measure is to be voted upon, as specified. 4.Requires the SOS to disseminate the complete state ballot pamphlet over the Internet and to establish a process to enable a voter to opt out of receiving the state ballot pamphlet by mail. 5.Requires the SOS to develop a program to utilize modern communications and information processing technology to enhance the availability and accessibility of information on statewide candidates and ballot initiatives, including making information available online as well as through other information processing technology. 6.Authorizes the proponents of a statewide initiative or referendum measure to withdraw the measure at any time before filing the petition with the appropriate elections official. 7.Requires that state initiative petitions circulated for signature include a prescribed notice to the public. 8.Makes certain activities relating to the circulation of an initiative referendum, or recall petition a criminal offense. This bill:

1. Makes minor modifications to provisions of law that prescribe how words are counted for the purposes of various provisions of the Elections Code, including for the word limit on a ballot title and summary.
2. Requires the Attorney General (AG), upon the receipt of a request from the proponents of a proposed initiative measure for a circulating title and summary, to initiate a public review process for a period of 30 days, as specified.
3. Permits proponents of the proposed initiative measure, during the public review period, to submit amendments to the measure, as specified, that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. Prohibits amendments from being submitted if the initiative measure as originally proposed would not effect a substantive change in law.
4. Deletes provisions of law that require the fiscal estimate or opinion of the proposed initiative measure be prepared by the Department of Finance (DOF) and the Joint Legislative Budget Committee and instead requires the estimate to be prepared by the DOF and the Legislative Analyst. Requires the fiscal estimate to be delivered to the AG within 50 days of the date of receipt of the proposed measure by the AG, instead of 25 working days from the date the AG receives the final version of the proposed measure.
5. Extends the period of time that a proposed initiative measure petition may be circulated from 150 days to 180 days.
6. Requires the proponents of a proposed initiative measure to submit a certification, signed under penalty of perjury, to SOS immediately upon the collection of 25% of the number of signatures needed to qualify the initiative measure for the ballot.
7. Deletes provisions of law that require Senate and Assembly committees to hold a joint public hearing on the subject of each initiative measure that qualifies for the ballot before the 30th day prior to the date of the election, and instead requires the committees to hold the hearing after the proponents certify that they have collected 25% of the number of required signatures, but not later than 131 days before the date of the election at which the measure is to be voted upon.
8. Permits proponents of a statewide initiative or referendum measure to withdraw the measure after filing the petition with the appropriate elections official at any time before the 131st day before the election at which the measure will appear on the ballot.
9. Requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure in a manner that is easy for voters to access and understand, as specified. 10.Requires the SOS to establish processes to enable a voter to do both of the following:

A. Opt out of receiving the state ballot pamphlet by mail pursuant to existing law; and
B. When the state ballot pamphlet is available, to receive either the state ballot pamphlet in an electronic format or an electronic notification making the pamphlet available by means of online access.

1. Requires the processes described above to become effective only after the SOS has certified that the state has a statewide voter registration database that complies with the federal Help America Vote Act of 2002.
2. Makes it a crime, for a proponent of a statewide initiative measure to seek, solicit, bargain for, or obtain any money or thing of value of or from any person, firm, or corporation for the purpose of withdrawing an initiative petition after filing it with the appropriate elections official.
3. Makes other conforming changes.
4. Contains double-jointing language to avoid chaptering problems with AB 2219 (Fong), SB 844 (Pavley), and SB 1043 (Torres) of the current legislative session.
5. Contains contingent enactment language to avoid implementation problems with SB 1442 (Lara) of the current legislative session.
6. Makes findings and declarations regarding initiative measures, also known as ballot measures or propositions, allow California voters to participate directly in lawmaking. California voters have enjoyed the right to enact laws through the initiative process since 1911. However, many voters find it difficult to understand the language of an initiative measure and to learn who is behind an initiative measure.

Background

The Initiative and Referendum Institute . According to the iandrinstitute.org, although the initiative process is different in every state, there are certain aspects of the process that are common to all. The five basic steps to any initiative are: Preliminary filing of a proposed initiative with a designated state official; Review of the initiative for compliance with statutory requirements prior to circulation; Circulation of the petition to obtain the required number of signatures; Submission of the petition signatures to the state elections official for verification of the signatures; and The placement of the initiative on the ballot and subsequent vote. The following is a national comparison on pre-circulation filing requirements and review processes: Prior to circulating a petition, the proposed initiative and a request to circulate must be submitted to the designated public officer such as the Lieutenant Governor, Attorney General or Secretary of State for approval. Nine states require the proposed initiative to be submitted with a certain number of signatures, ranging from five in Montana to 100 in Alaska. Five states require a deposit that is refunded when the completed petition has been filed. Depending, on the state the petition may be reviewed for form, language and/or constitutionality. Ten states require the Secretary of State's office or the Attorney General to review initiatives for proper form only. Twelve states require some form of pre-circulation/certification review regarding language, content or constitutionality. However, in all but four of these states, the results of the review are advisory only. In Arkansas, the Attorney General has authority to reject a proposal if it utilizes misleading terminology. In Utah, the Attorney General can reject an initiative if it is patently unconstitutional, nonsensical, or if the proposed law could not become law if passed. In Oregon, the Attorney General can stop an initiative from circulating if he believes it violates the single amendment provision for initiatives and in Florida, the State Supreme Court, during its mandatory review, can stop an initiative if it is unconstitutional or violates the state's very strict single subject requirement. Circulation periods range from as brief as 64 days in Massachusetts to an unlimited duration, though there are limits on how long a petition signature is valid. Most states also have deadlines for submitting initiative petitions, so that officials will have time to verify the signatures, publish the initiative, and prepare the ballot. Arkansas, Ohio and Utah have no time limit for signature gathering. Oklahoma at 90 days, California at 150 days, and Massachusetts at 64 days have the shortest circulation periods. It is unknown if any of the 24 states provides opportunity during the process for the proponent to withdraw a proposal at any time before the measure qualifies for the ballot.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes According to the Assembly Appropriations Committee: The SOS will incur minor additional costs ($40,000 annually) to create a website and update information on each ballot measure. All other administrative costs to the SOS will be minor and absorbable. Extending the petition circulation period by 30 days will increase the likelihood that more measures will qualify for the ballot. On the other hand, providing the opportunity for legislative review during the circulation period could lead to agreements with the Legislature and withdrawal of some measures from circulation. The net impact of these two changes is unknown, however, the average cost for including in the state ballot pamphlet the text, analysis, and arguments for and against a measure are around $600,000 per measure. The SOS anticipates minor costs to notify voters electronically that the state ballot pamphlet is available

SUPPORT : (Verified 8/27/14) California Common Cause (co-source) League of Women Voters of California (co-source) AARP AAUW Bay Area Council California Business Roundtable California Calls California Chamber of Commerce California Council of Church IMPACT California Democratic Party California Forward Action Fund California School Employees Association California State Employees Association Chino Valley Dem Club Dems of North Orange County Laguna Woods Democratic Club Los Angeles Business Council NAACP RFK Democratic Club San Gabriel Valley Democratic Women's Club Sonoma County Democratic Club Think Long Committee for California Yucaipa-Calimesa Democratic Club

OPPOSITION : (Verified 8/27/14) California Teachers Association

ARGUMENTS IN SUPPORT : According to the author: The changes in this bill are similar to the recommendations made twenty years ago by the Citizen's Commission on Ballot Initiatives. The current 150 days to gather signature does not provide enough time for public input or changes to the initiative language. This bill extends the time allowed to gather signatures and establishes a prequalification process. The prequalification process includes the ability to amend an initiative before it appears on the ballot as long as the changes are consistent with the original intent. The prequalification process also engages the Legislature earlier in the process. Presently, there is not a sufficient review process of initiatives by the public or the Legislature where either is able to provide greater input and suggest amendments or correct flaws before the measure is printed on the ballot. Implementing a better public review process before the title and summary process by the AG and allowing the Legislature to hold a hearing after 25% of signatures are collected helps address this deficiency. Also, the concern that voters are asked to decide important issues through the initiative process without adequate information is real. This bill aims to provide clearer and more thorough information. Another problem in current law is inability for a proponent to withdraw their own initiative. As described in the previous section, if a proponent of an initiative pursues an alternative path to solving an issue -

specifically through compromise through the legislative process - there is no mechanism for the proponent to remove their own ballot initiative after it's been qualified.

ARGUMENTS IN OPPOSITION : The California Teachers Association states in opposition, "Our State Council of Education members expressed grave concerns about the extension of time SB 1253 authorizes the circulation of a proposed initiative given that previous initiative proposals have resulted in a variety of 'unintended consequences' including but not limited to the opportunity for non-legal campaign contributions to influence election outcomes; the increased possibility of fraud in the signature gathering process; and the likelihood that initiatives that adversely affect 'good government' will qualify for the ballot."

ASSEMBLY FLOOR : 55-23, 8/27/14 AYES: Alejo, Ammiano, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Dababneh, Daly, Dickinson, Eggman, Fong, Frazier, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Hall, Roger Hernández, Holden, Jones-Sawyer, Levine, Lowenthal, Medina, Mullin, Muratsuchi, Nazarian, Olsen, Pan, Perea, John

A. Peŕez, V. Manuel Peŕez, Quirk, Quirk-Silva, Rendon, Ridley-Thomas, Rodriguez, Salas, Skinner, Stone, Ting, Weber, Wieckowski, Williams, Yamada, Atkins NOES: Achadjian, Allen, Bigelow, Chávez, Conway, Dahle, Donnelly, Fox, Beth Gaines, Gonzalez, Grove, Hagman, Jones, Linder, Logue, Maienschein, Mansoor, Melendez, Nestande, Patterson, Wagner, Waldron, Wilk NO VOTE RECORDED: Harkey, Vacancy RM:nl 8/27/14 Senate Floor Analyses SUPPORT/OPPOSITION: SEE ABOVE **** END ****

CA B. An., S.B. 1253 Sen., 8/22/2014

End of Document

Thomas W. Hiltachk (SBN 131215)
tomh@bmhlaw.com
Brian T. Hildreth (SBN 214131)
bhildreth@bmhlaw.com
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 442-7757
Facsimile: (916) 442-7759

Attorneys for Petitioners
CALIFORNIA DISTRICT ATTORNEYS
ASSOCIATION, and ANNE MARIE SCHUBERT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, and ANNE MARIE SCHUBERT, an individual and in her personal capacity, Petitioners, v. ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA HARRIS, in her official capacity only; and DOES I-X, inclusive, Respondents.	CASE NO. 34-2016-80002293 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE [ELEC. CODE, §§ 9002 and 13314; C.C.P., §§ 1021.5, 1085].** **IMMEDIATE ACTION REQUIRED: ELECTION LAW MATTER ENTITLED TO CALENDAR PREFERENCE PURSUANT TO C.C.P. § 35; ELECTIONS CODE § 13314** DATE: TIME: DEPT:
MARGARET R. PRINZING and HARRY BEREZIN, Real Parties In Interest.	Petition Filed: 2/11/2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page No.(s)

CASES

STATUTES

TABLE OF AUTHORITIES CONT.

TABLE OF AUTHORITIES CONT.

Page No.(s)

Vehicle Code:

OTHER AUTHORITIES

California Constitution:

INTRODUCTION

Petitioners ask this Court to prohibit Respondent Attorney General Harris from issuing a circulating title and summary (Elec. Code, § 9004) for an initiative measure that was submitted to her office on January 26, 2016 (the self-titled "Public Safety and Rehabilitation Act of 2016") until that measure has fully complied with the review process and timetable provided for by Elections Code sections 9002 and 9005. Unless prohibited by this Court, Petitioners believe that Respondent will issue the title and summary:

- Without providing the statutorily required 30-day "public review period;"
- Without providing the Legislative Analyst Office ("LAO") the statutorily permitted 50-day period to examine the state and local government fiscal impacts of the initiative; and
- Without providing herself the statutorily permitted 65-day period to prepare a title and summary of the chief purpose and points of the measure.

Instead, Petitioners are informed and believe that Respondent will issue a title and summary to Real Parties on or before February 25, 2016, just 30 days after receiving the text of the proposed initiative measure, after having provided NO public review period; after giving the LAO just 16 days to analyze an extremely complex initiative; and after providing herself less than half the statutory time allowed to prepare a title and summary for the proposed initiative.[1]

The errors alleged herein were caused directly by Respondent's improper decision to accept the January 26, 2016 submission by Real Parties as an "amendment" to Real Parties' prior initiative filed on December 22, 2015 (the self-titled "The Justice and Rehabilitation Act"). In short, the January 26, 2016 is not an amendment of the prior initiative draft – it is an entirely different and *new* initiative.

This matter is complicated by the fact that Real Parties are apparently now acting as agents of Governor Jerry Brown. Shortly after the January 26, 2016 filing, the Governor publicly announced that he was going to propose a ballot measure to eliminate over 40 years of determinate sentencing law and parole laws enacted by the voters during the same time period. (See Declaration of Thomas

[1] Moreover, in addition to the public harm caused by this error if not immediately corrected, Respondent will have allowed Real Parties to "cut in line" ahead of five other proposed initiatives filed after December 22, 2015 but prior to January 26, 2016.

W. Hiltachk ("Hiltachk Decl."), ¶ 2 and **Exh A** thereto ["How Jerry Brown's parole initiative came together"].) Petitioners are not aware that Governor Brown had any interest, connection, or role with Real Parties' December 22, 2015 submission because it was not "reasonably germane to the theme, purpose, or subject of the initiative measure as it was originally proposed." (Elec. Code, § 9002(b) (emphasis added).)

Respondent Attorney General should have rejected the January 26 2016 submission as an "amendment" to the prior submission and instead accepted it as a *new* submission, as required and authorized by Elections Code section 9002(b)(4). This writ petition seeks to correct this error.

BACKGROUND

On December 22, 2015, Real Parties submitted the "The Justice and Rehabilitation Act" to the Attorney General's Office pursuant to Elections Code section 9001 requesting a circulating title and summary. (See Request for Judicial Notice ("RJN") and **Exh. A** thereto.) That submission was designated by the Attorney General as measure number 15-0121. The initial version of the initiative measure proposed several changes in state statutes primarily to eliminate a prosecutor's discretion to directly file a case involving a juvenile in adult court and eliminate all presumptions that serious/violent offenders are unfit to be prosecuted in juvenile court, in favor or juvenile fitness hearings. These statutory laws would have changed significant provisions of law that were part of Proposition 21, enacted by the voters in 2000.

As required by Elections Code section 9002, Respondent posted the proposed initiative measure on her website for public review for a period of 30 days. The 30-day public review period is to give members of the public an opportunity to comment on proposed measures. In addition, she informed the LAO of the submission so that it could commence its review and estimate of the increase or decrease in revenues or costs to state and local government required by Elections Code section 9005.

On January 26, 2016 – after the close of the mandatory 30-day public review period – Real Parties filed a purported *amendment* to initiative number 15-0121. This time the measure was titled the "Public Safety and Rehabilitation Act of 2016." (RJN and **Exh. B** thereto.) Now, instead of focusing on the procedures for charging a juvenile defendant as an adult, the additional text added a

Constitutional Amendment dealing with post-trial determinate sentencing, parole, and credits awarded to adult prisoners.

Respondent apparently accepted the January 26, 2016 submission as an amendment to the prior submission despite the fact that the new submission was not "reasonably germane to the theme, purpose, or subject" of the December 22, 2015 initial submission. As a consequence, Petitioners believe that Respondent is prepared to issue her circulating title and summary (required by Elections Code section 9004) based on the deadline established by the December 22, 2015 (approximately 65 days following the date of submission), on or before February 25, 2016.

Had Respondent rejected the January 26, 2016 submission as an "amendment" and instead treated it as a new submission, she would not be required to issue a circulating title and summary until approximately March 31, 2016 (65 days following that date of that submission). More importantly, the public would regain its statutory period for public inspection and the LAO would be allowed the full statutory 50-day period (instead of the 16 that were provided in this case) to analyze the fiscal impacts of this new and complex proposed initiative. The circulating title and summary, including a summary of the LAO's fiscal analysis is printed on the top of every petition section circulated among the voters and is the primary method a voter has to learn how the proposed initiative will change the law and what the fiscal impact of such a change will have on state and local government. (Elec. Code, § 9008.)

LEGAL ARGUMENT

Petitioners bring this action as a Petition for Writ of Mandate pursuant to Elections Code section 13314 and Code of Civil Procedure sections 1085 and 1086. Section 13314 provides that petitioners who are electors of the state may seek a writ of mandate for any error in neglect of official duty that has occurred or is about to occur. Such an action has priority over all other civil matters. Sections 1085 and 1086 provide that petitioners may seek a writ of prohibition/mandate to restrain respondents from taking any official action violation of law. Pursuant to Elections Code section 13314, the exclusive venue for this action is Sacramento County. (Elec. Code, § 13314(b)(3).)

A. Elections Code section 9002(b) Provides a Limited Opportunity for an Initiative Proponent to "Amend" a Previously-Filed Initiative. Such an "Amendment" is Limited to Changes that are Reasonably Germane to the Text of the Original Proposed Initiative.

Prior to 2015, there was little opportunity for an initiative proponent to amend the text of a proposed initiative after he or she submitted the text to the Attorney General with a request for the issuance of a circulating title and summary. Moreover, there was virtually no opportunity for the public to review and comment on a proposed initiative measure during the title and summary/LAO fiscal analysis period to identify errors, flaws or even typographical or grammatical errors discovered in a proposed initiative.

In 2014, the Legislature passed, and the Governor signed, Chapter 697 (SB 1253 Steinberg) which made several changes to the initiative qualification process. Principal among these changes was the creation of a 30-day public inspection period meant to allow voters and the public to review and comment on new initiative measures. The statute also allows the proponent to "submit amendments to the measure that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed." (Elec. Code, § 9002(b).) Elections Code section 9002 provides:

> (a) Upon receipt of a request from the proponents of a proposed initiative measure for a circulating title and summary, the Attorney General shall initiate a public review process for a period of 30 days by doing all of the following:
> (1) Posting the text of the proposed initiative measure on the Attorney General's Internet Web site.
> (2) Inviting, and providing for the submission of, written public comments on the proposed initiative measure on the Attorney General's Internet Web site. The site shall accept written public comments for the duration of the public review period. The written public comments shall be public records, available for inspection upon request pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, but shall not be displayed to the public on the Attorney General's Internet Web site during the public review period. The Attorney General shall transmit any written public comments received during the public review period to the proponents of the proposed initiative measure.
> (b) During the public review period, the proponents of the proposed initiative measure may submit amendments to the measure that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. However, amendments shall not be submitted if the initiative measure as originally proposed would not effect a substantive change in law.

> (1) An amendment shall be submitted with a signed request by all the proponents to prepare a circulating title and summary using the amended language.
> (2) An amendment shall be submitted to the Attorney General's Initiative Coordinator located in the Attorney General's Sacramento Office via United States Postal Service, alternative mail service, or personal delivery. Only printed documents shall be accepted; facsimile or email delivery shall not be accepted.
> (3) The submission of an amendment shall not extend the period to prepare the estimate required by Section 9005.
> (4) An amendment shall not be accepted more than five days after the public review period is concluded. However, a proponent shall not be prohibited from proposing a new initiative measure and requesting that a circulating title and summary be prepared for that measure pursuant to Section 9001.

Submissions received after the conclusion of the public review period plus 5 days, or which are not reasonably germane to the original submission, are to be treated as a new submission. (Elec. Code, § 9002(b)(4).)

In considering SB 1253, the State Senate circulated an analysis that clearly summarized the legislative intent of the law in this respect:

> According to the author: ... The prequalification process includes the ability to amend an initiative before it appears on the ballot ***as long as the changes are consistent with the original intent***. ... Presently, there is not a sufficient review process of initiatives by the public or the Legislature where either is able to provide greater input and suggest amendments or correct flaws before the measure is printed on the ballot. ***

(California Bill Analysis, Senate Floor, 2013-2014 Regular Session, Senate Bill 1253, August 22, 2014 (see RJN and **Exh. C** thereto ["Also, the concern that voters are asked to decide important issues through the initiative process without adequate information is real. This bill aims to provide clearer and more thorough information"]) (emphasis added).)[2]

Similarly, the Assembly Committee on Elections and Redistricting analyzed the amendment option in the bill as one addressing "errors in the drafting of" and "correcting flaws" in the text of the proposed measure. The Assembly bill analysis pointed out that a significant purpose of the statute

[2] The statutory scheme for newly filed ballot initiative measures also affords the LAO a full 50-days to study the fiscal impact of the proposed initiative measure. In this regard, the "germaneness" requirement is important, because the LAO will have commenced its analysis of the original filing. A late-filed amendment allows the LAO only 15 or more days to analyze the amendments to determine if they change the fiscal impact of the measure. Lastly, the Attorney General is required to issue the title and summary, including a summary of the LAO's fiscal impact analysis within 15 days following receipt of the LAO's review. In total, the entire title and summary/fiscal analysis process must be concluded within 65 calendar days.

included the following:

> ***Identifying and correcting flaws in an initiative measure before it appears on the ballot.*** Currently, proponents of an initiative measure have few options to ***correct the language*** of an initiative measure or to withdraw a petition for a proposed initiative measure, even when flaws are identified. This Act gives voters an opportunity to comment on an initiative measure before the petition is circulated for signatures. ***Public comment may address perceived errors in the drafting of, or perceived unintended consequences of, the proposed initiative measure.***

(California Bill Analysis, Assembly Committee on Elections and Redistricting, June 17, 2014 (emphasis added) (see RJN and **Exh. D** (p. 5) thereto).)

Finally, even stakeholders and legislative observers apparently believed the bill's amendment procedures were for the purpose of correcting "legal flaws" in a proposed ballot initiative measure. Writing in support of SB 1253, California Common Cause wrote the author of the bill (Senator Steinberg) in support, stating the following:

> California Common Cause supports Senate Bill 1253 because it would give voters more accessible information about who is behind each initiative, ensure Voter Guides are easily understood, ***and allow legal flaws to be corrected*** in an initiative before it appears on the ballot. Ultimately these reforms are critical in order to make the ballot measure process more clear, transparency, and fair.

(Senate Bill File, Letter of Support from California Common Cause, March 14, 2014 (emphasis added) (see RJN and **Exh. E** thereto).)

The clear purpose of the changes to Elections Code section 9002 is to allow proponents of an initiative measure to correct errors and consider and implement public comments into the originally filed initiative. The intent of the statutory changes is not to allow a proponent to "gut-and-amend" a previously filed measure with a complete rewrite and thereby short-cut the analysis and review process.

In considering a "statute's purpose, legislative history, and public policy" the objective of the analysis is to determine which construction of the statute best fits the intent of the Legislature in enacting the statute. (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) In doing so, courts have agreed that "[w]here more than one statutory construction is arguably possible, our policy has long been to favor the construction that leads to the more

reasonable result.... [O]ur task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results." (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1291.)

Petitioners anticipate that Real Parties (and possibly Respondent) will argue that appellate opinions using the phrase "reasonably germane" to interpret the State's so-called "single subject rule" should also apply to the instant matter involving section 9002. However, equating the two would be would be a false equivalence. The single subject rule is embodied in California Constitution, Article 2, section 8(d), which provides that "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." In articulating the proper standard for analyzing the single subject rule, the governing judicial decisions establish that "all parts" of an initiative measure must be "'reasonably germane' to each other, and *to the general purpose or object of the initiative*" as a whole. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 512 (emphasis added); and see *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253 ["For example, the rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare'"].)

Conversely, section 9002 requires that any amendment to a pre-existing proposed ballot initiative be reasonably germane "to the theme, purpose, or subject of the initiative measure ***as originally proposed***." (Emphasis added.) Thus, the limitation in Elections Code section 9002 is clearly different and more restrictive than the broad single subject rule. Real Parties' anticipated argument would permit broad changes to a proposed ballot measure after the close of the public comment period (as Real Parties did here), thereby destroying the very purpose of section 9002 – to give the public and voters a meaningful opportunity to review proposed initiative measures and comment on those measures for the purpose of correcting errors. The court cannot accept such an interpretation or construction of the statute.

B. Real Parties in Interest's January 26, 2016 Submission Is Not "*Reasonably Germane to the Theme, Purpose, or Subject of the Measure As Originally Filed*" On December 22, 2015, and Therefore May Not Be Treated as an Amendment to That Measure.

There can be no plausible legal argument that Real Parties' January 26, 2016 submission is "reasonably germane to the theme, purpose, or subject of the measure as originally filed" on December 22, 2015. Real Parties' original filing was a statutory measure that dealt with the procedure for prosecuting a juvenile as an adult. The subsequent filing proposes to add a constitutional amendment, which effectively repeals nearly four decades of determinate sentencing law, several voter-approved initiatives, and would permit the granting of parole rights to an estimated 30 - 40 thousand current adult felons serving terms in state prison.

1. The December 22. 2015 Submission.

The theme purpose and subject of Real Parties' December 22, 2015 submission was clearly and directly focused on juvenile justice. In particular, the proposed Act would amend several provisions of law enacted by the voters in 2000 (Proposition 21) and specifically would prohibit a district attorney from direct-filing a criminal complaint against a juvenile in adult court. Instead, a district attorney would be required to obtain the consent of a judge in juvenile court after hearing. In addition, many of the presumptions regarding fitness for juvenile vs. adult court are proposed to be repealed. These objectives were to be accomplished by the amendment and/or repeal of eight statutes in the Welfare & Institutions Code and three statutes in the Penal Code, all dealing exclusively with juveniles/youthful offenders. (RJN and **Exh. A** (p. 1-2) thereto.)

It is clear from the operative provisions of Real Parties' December 22, 2015 submission that the theme, purpose and subject of their initially-filed measure was specifically limited to the prosecution of juveniles.

2. The January 26, 2016 Submission.

In stark contrast to the focus of the December 22, 2015 submission, the January 26, 2016 submission proposes a sweeping overhaul of the State's criminal sentencing law applicable to adults, including tens of thousands currently serving prison sentences – presumably to address over-crowding in our state prison system. It does so by proposing a new amendment to the Constitution

(Art. 1, § 32) that would provide:

> (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:
> (1) Parole consideration: Any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense. (A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.
> (2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.
> (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

(RJN and **Exh. B** thereto.)

This new proposed constitutional amendment, if adopted, would effectively repeal or substantively change (by constitutional supremacy) at a minimum, the following sentencing, sentence enhancement, and prison credits provisions of law enacted by the Legislature and the People over the last 40 years:

General Sentencing

Penal Code section 1170 – this is the main statutory provision for the Determinate Sentencing Law (DSL):

- The purpose of imprisonment for crime is punishment.
- Provides that the purpose of imprisonment is punishment and that this purpose is best served by "terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances."

Proposition 9 - (Marsy's Law, the Victims' Bill of Rights Act of 2008), enacted November 4, 2008. "Victims of crime have a collective 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." Section 2, paragraph 5, states:

> 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. (Cal. Const., art. I, § 28(f)(5).)

Consecutive Sentencing

Penal Code section 1170.1 - the principal term for determinate (DSL) crimes that are sentenced consecutively under Penal Code section 1170.1(a) is the longest term actually imposed by the court for any of those DSL crimes including any applicable specific (or conduct-type) enhancements, regardless of the sequence of conviction or sentencing; it is imposed as a full term sentence.

Penal Code section 669 – multiple felony offenses and consecutive sentences.

Propositions 184, 36; Penal Code sections 667, 1170.12 – The Three Strikes Law – consecutive sentences on Two Strike and Three Strike cases (mandatory consecutive sentencing for offenses committed on separate occasions).

Penal Code sections 1170.13, 1170.15 – provide for full term consecutive sentencing for certain offenses, including witness intimidation.

Enhancements

Penal Code section 1170.1(a) - Applicable specific enhancements (such as weapons and injury) are added to the base term for the crime; the principal term equals the base term plus such enhancements. (See *People v. Anderson* (1995) 35 Cal.App.4th 587, 592-93.)

Proposition 35 (Californians Against Sexual Exploitation Act), enacted November 6, 2012. Increases penalties for human trafficking, including enhancements of 5, 7 or 10 years for infliction of great bodily injury. (Penal Code, § 236.4(b).)

Penal Code section 12022.53 (10-20-Life Law) – when attached to a serious felony, if a firearm allegation is not considered when determining whether an offense is violent, then the 10-20-Life enhancement will be disregarded.

Penal Code section 12022.5 – when attached to a serious felony, if a firearm allegation is not considered when determining whether an offense is violent, then this enhancement which calls for an enhancement of 3-4-10 years will be disregarded.

Penal Code section 1170.11 – lists various "specific enhancements" (i.e., those that relate to the circumstances of the crime), that will be impacted.

Penal Code section 12022(a)(1) – Add one year if any principal in the crime is armed with a firearm during the crime.

Penal Code section 12022(b)(1) – Add one year if the defendant personally uses a deadly or dangerous weapon during the crime (1-2-3 years for completed or attempted carjacking [subd. (b)(2)].)

Penal Code section 12022(c) – Add three, four, or five years if the defendant is personally armed with a firearm during certain specified drug crimes.

Penal Code section 12022.4 – furnishing firearm to another with specific intent it be used in a crime (+1-2-3 years).

Penal Code section 12021.5 – carry firearm in street gang crime (+1-2-3 years).

Penal Code section 12022.75 – administering a date rape drug during sex acts against victim (+5 years).

Penal Code section 12022.85 – committing non-violent sex crimes knowing you have AIDS or are HIV positive (+3 years).

Penal Code section 12022.9 – injury on a pregnant female terminating pregnancy (+5 years).

Penal Code section 186.11 – white collar fraud/embezzlement enhancement if loss over $500,000 (+2-3-5 years).

Penal Code section 12022.6 – Add enhancements as follows if the defendant intentionally causes loss exceeding these amounts: subd. (a)(1) $65,000 – add one year; subd. (a)(2) $200,000 – add two years; subd. (a)(3) $1.3 million – add three years; subd. (a)(4) $3.2 million – add four years.

Penal Code section 667.9(a) – Add one year to each offense if the defendant commits a listed felony against a known vulnerable victim.

Penal Code section 667.9(b) – If the current offense is a listed felony committed against a known vulnerable victim and the defendant has a prior conviction for any listed felony, add two years to each current offense.

Penal Code section 368(b)(2), (b)(3) – Enhancements for the crime of elder abuse.

Penal Code section 422.75(a), (b) – Enhancements for a felony that is a hate crime.

Penal Code section 186.22(b)(1) – Add enhancements as follows if the defendant commits any felony for gang purposes: subd. (b)(1)(A) – add two, three, or four years if the underlying felony is not a serious or violent felony (middle term presumption deleted eff. 1/1/10 and will be repealed 1/1/17 unless extended; see section VI.E.6.); subd. (b)(1)(B) – add five years if the underlying felony is a serious felony; subd. (b)(1)(C).

Health & Safety Code section 11370.4; Health & Safety Code section 11379.8 – Enhancements for drug crimes based on weight or volume of the substance.

Health & Safety Code section 11353.1 – enhancements involve transactions near schools.

Health & Safety Code section 11353.6 – drug dealing near schools when kids are present (+3-4-5 years).

Health & Safety Code section 11379.7 – manufacturing drugs when kids under 16 are present (+2 years).

Vehicle Code section 23558 – Add one year for each additional victim (three years maximum) if the defendant injures multiple victims in felony drunk driving or intoxicated vehicular manslaughter.

Vehicle Code section 20001(c) DUI + hit & run + death - +5 years; Penal Code section 191.5(d) – 15 years-to-life term for gross vehicular manslaughter DUI with specified prior.

Penal Code section 12022.1 – Add two years and mandatory consecutive sentencing if the defendant commits a new crime while released on bail or O.R. on a prior crime and is convicted of both.

Prior Convictions

Penal Code section 1170.1(a) - For determinate sentences, prior convictions that are used for enhancement are part of the additional term; such priors are added once to the total term of imprisonment, not to each separate count or case; they are imposed as full term enhancements (*People v. Tassell* (1984) 36 Cal.3d 77, 89-92. [overruled on other grounds in *People v. Ewoldt* (1994) 7 Cal.4th 380, 401].)

Proposition 8 (The Victims' Bill of Rights), enacted June 1982. "Any prior felony conviction of any person in any criminal proceeding…shall subsequently be used without limitation for purposes of … enhancement of sentence in any criminal proceeding." (Cal. Const., art. I, § 28(f), renumbered by Prop. 9 in 2008 as Art. I, § 28(f)(4).)

Proposition 21 (The Gang Violence and Juvenile Crime Prevention Act of 1998), enacted March 2000. "Vigorous enforcement and the adoption of more meaningful criminal sanctions, including the voter-approved 'Three Strikes' law, Proposition 184, has resulted in a substantial and consistent four year decline in overall crime." (Section 2 (c).)

Proposition 35 (Californians Against Sexual Exploitation Act), enacted November 6, 2012. Increases penalties for human trafficking, including enhancement of 5 years if the defendant has a prior conviction. (Penal Code, § 236.4(c).)

Propositions 184 & 36; Penal Code sections 667, 1170.12 (Three Strikes Law). "Three Strikes and You're Out" is a statute designed to punish habitual criminals who have one or more qualifying prior felony convictions ("strikes"). There are two nearly identical versions of this statute which apply to crimes committed after their effective dates (legislative statute: Penal Code section 667(b)-(i) effective 2:45 p.m. on 3/9/94; initiative statute: Penal Code section 1170.12, effective 11/9/94). The Three Strikes law was substantially amended by initiative measure (Proposition 36, effective November 7, 2012). Three Strikes is considered an "alternative sentencing scheme" by the courts. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 527; *People v. Cressy* (1996) 47 Cal.App.4th 981, 991; *People v. Sipe* (1995) 36 Cal.App.4th 468, 485-486.)

Penal Code section 667(a) – If the current offense is a "serious felony" as defined in Penal Code section 1192.7(c), add five years for each separate "serious felony" prior conviction.

Penal Code section 667.5(b) – If the current offense is any felony, add one year for each prior separate prison term.

Health & Safety Code section 11370.2 – Drug priors; if the current offense is a specified drug crime, add three years for each prior conviction for a specified drug crime.

Credits

Penal Code section 2933 – Custody time in state prison is reduced by credits; these credits are based on the formula of one day credit for one day served; this results in approximately a one-half reduction of the balance of the term imposed.

Penal Code section 2933.1 – credits on "violent" offenses per 667.5(c) limited to 15%.

Penal Code section 2933.2; Penal Code section 190(e) – no conduct credit reduction of murder minimum terms.

Penal Code sections 667(c)(5); 1170.12(a)(5) (Three Strikes Law) – Conduct credit reduction of the total term of imprisonment is limited to a maximum of 20% post-sentence if the defendant has a prior "strike" conviction.

Propositions 184, 36; Penal Code section 667, 1170.12 – no conduct credit reduction of the minimum term of a "three-strike" life sentence, and prison credits on other terms, including enhancements, are limited to 20% or 15% (*In re Cervera* (2001) 24 Cal.4th 1073; *People v. Stofle* (1996) 45 Cal.App.4th 417).

Penal Code section 3040 *et seq.* – Credits on indeterminate sentences. After serving a designated minimum sentence, and periodically thereafter, these prisoners appear before a parole board.

Penal Code section 3046 – for indeterminate offenses, provides that "life" means seven actual calendar years with no conduct credits.

Proposition 9 (Marsy's Law) – victims' rights initiative (effective 11/5/08) makes numerous changes relating to victim notification and participation, as well as substantial changes to parole provisions.

Proposition 222 (June 2, 1998) – eliminated any conduct credit reduction of the prison term for defendants convicted of murder.

This sweeping change in sentencing law for adults is not reasonably germane to the prior submission, which was focused on the procedures for prosecuting juveniles as adults. Moreover, the public is entitled to its full 30-day period to review this proposed change in law, the LAO is entitled to its full 50-day period to analyze the fiscal impacts of this proposed change in law and the

Respondent herself, should be entitled the full time period to provide a title and summary that describes the chief purpose and points of the proposed change in law.

CONCLUSION

Real Parties may unquestionably attempt to qualify their new measure for the statewide ballot. Petitioners have no quarrel with Real Parties' right to utilize direct democracy to bypass the Legislature, though one wonders with the Governor finds it necessary to do so. However, in seeking to qualify its initiative measure, Respondent and Real Parties must stand in line and comply with the requirements of the Elections Code like everyone else proposing ballot measures, including the statutorily mandated 65-day review and analysis period. Additionally, Respondent may unquestionably issue a circulating title and summary for Real Parties' originally-filed initiative after the statutory process is completed.

The January 26, 2016 filing must be treated as a new filing and this Court should act immediately to prohibit Respondent Attorney General from allowing Real Parties' new measure from unlawfully jumping to the front of line, which has the effect of denying the public and voters their statutory right of review.

Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law other than the relief sought in this Petition. This action will cause injury, not only to Petitioners, but also to the other qualified voters of California who will not have had a meaningful opportunity to participate in the public comment period afforded to for all new measures and who will be compelled to consider an measure that is invalid on the basis that it has not complied with the statuary formalities all new measures must complete before being circulated.

Petitioners respectfully request this Court grant the instant Verified Petition for Writ of Mandate.

Dated: February 16, 2016.

BELL, McANDREWS & HILTACHK, LLP

BY: _____

THOMAS W. HILTACHK
BRIAN T. HILDRETH
Attorneys for Petitioners

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing occurred. The following facts are within my first-hand and personal knowledge and if called as a witness, I could and would testify thereto.

2. My business address is 455 Capitol Mall, Suite 600, Sacramento, CA 95814.

On February 16, 2016, I served the foregoing document entitled

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

on each person named below by enclosing a true copy in an envelope addressed as shown in Item 5 and by:

a. ____ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.

b. placing the sealed envelope with postage prepaid for collection and mailing on the date and at the place shown in Item 4 following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. In the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in the place shown in Item 4.

c. ____ transmitting via facsimile to the number(s) during regular business hours.

d. ____ personally serving.

e. X transmitting by email to the offices of the addressee(s) following ordinary business practices during ordinary business hours.

f. ____ causing to be deposited in a sealed envelope with FedEx Overnight Mail.

g. ____ causing to be hand-delivered via a professional courier service.

5. Name and address of each person served:

Counsel:	**Party Represented:**
Connie LeLouis Supervising Deputy Attorney General *Connie.LeLouis@doj.ca.gov* Paul Stein Deputy Attorney General *Paul.Stein@doj.ca.gov* Tamar Pachter Deputy Attorney General *Tamar.Pachter@doj.ca.gov* CALIFORNIA DEPARTMENT OF JUSTICE 1300 I Street Suite 1330 Sacramento , California 95814	Respondent, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA HARRIS
James Harrison REMCHO, JOHANSEN & PURCELL, LLP 201 Dolores Avenue San Leandro, CA 94577 Tel: (510) 346-6200 Email: *harrison@rjp.com*	Real Parties in Interest, MARGARET R. PRINZING and HARRY BEREZIN

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 16, 2016, at Sacramento, California.

CORIANNE DURKEE

Thomas W. Hiltachk (SBN 131215)
tomhl@bmhlaw.com
Brian T. Hildreth (SBN 214131)
bhildreth@bmhlaw.com
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 442-7757
Facsimile: (916) 442-7759

Attorneys for Petitioners
CALIFORNIA DISTRICT ATTORNEYS
ASSOCIATION, and ANNE MARIE SCHUBERT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, and ANNE MARIE SCHUBERT, an individual and in her personal capacity, Petitioners, v. ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA HARRIS, in her official capacity only; and DOES I-X, inclusive, Respondents.	Case No. 34-2016-80002293 **DECLARATION OF THOMAS W. HILTACHK IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE** **IMMEDIATE ACTION REQUIRED: ELECTION LAW MATTER ENTITLED TO CALENDAR PREFERENCE PURSUANT TO C.C.P. § 35, ELECTIONS CODE § 13314** DATE: TIME: DEPT:
MARGARET R. PRINZING and HARRY BEREZIN, Real Parties In Interest.	Petition filed: 02/11/2016

I, Thomas W. Hiltachk, declare:

1. I am counsel for Petitioners in this matter. I am a member of the California State Bar and am admitted to practice before this California Court. I make this declaration of my personal knowledge of the facts stated herein and could and would competently testify to them if called to do so.

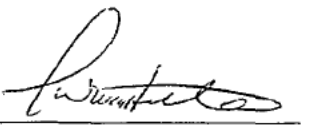
2. On or about January 29, 2016, the Sacramento Bee newspaper published an article titled: "How Jerry Brown's parole initiative came together." The article describes how Governor

Jerry Brown managed to expedite his proposed initiative measure such that it avoided the public review process provided for in the Elections Code:

> Juvenile justice advocates had submitted their own, little-noticed initiative in December, seeking to undo provisions of a 2000 ballot measure allowing prosecutors rather than judges to decide when to try teenagers as adults.
>
> After months of talks, Brown joined their effort, adding to their initiative his proposal to make certain nonviolent felons eligible for early parole and, possibly more significantly, to give the Department of Corrections and Rehabilitation authority to award credits for good behavior. Brown said inmates currently have little incentive to rehabilitate themselves while in prison.

Attached hereto as **Exhibit A** is a true and correct copy of the January 29, 2016 Sacramento Bee news article.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of February, 2016, at Sacramento, California.



THOMAS W. HILTACHK

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing occurred. The following facts are within my first-hand and personal knowledge and if called as a witness, I could and would testify thereto.

2. My business address is 455 Capitol Mall, Suite 600, Sacramento, CA 95814.

On February 16, 2016, I served the foregoing document entitled

DECLARATION OF THOMAS W. HILTACHK IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

on each person named below by enclosing a true copy in an envelope addressed as shown in Item 5 and by:

a. ____ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
b. placing the sealed envelope with postage prepaid for collection and mailing on the date and at the place shown in Item 4 following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. In the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in the place shown in Item 4.
c. ____ transmitting via facsimile to the number(s) during regular business hours.
d. ____ personally serving.
e. X transmitting by email to the offices of the addressee(s) following ordinary business practices during ordinary business hours.
f. ____ causing to be deposited in a sealed envelope with FedEx Overnight Mail.
g. ____ causing to be hand-delivered via a professional courier service.

5. Name and address of each person served:

Counsel:	**Party Represented:**
Connie LeLouis Supervising Deputy Attorney General *Connie.LeLouis@doj.ca.gov* Paul Stein Deputy Attorney General *Paul.Stein@doj.ca.gov* Tamar Pachter Deputy Attorney General *Tamar.Pachter@doj.ca.gov* CALIFORNIA DEPARTMENT OF JUSTICE 1300 I Street Suite 1330 Sacramento , California 95814	Respondent, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA HARRIS
James Harrison REMCHO, JOHANSEN & PURCELL, LLP 201 Dolores Avenue San Leandro, CA 94577 Tel: (510) 346-6200 Email: *harrison@rjp.com*	Real Parties in Interest, MARGARET R. PRINZING and HARRY BEREZIN

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 16, 2016, at Sacramento, California.

CORIANNE DURKEE

EXHIBIT A

CAPITOL ALERT JANUARY 29, 2016 5:54 PM

How Jerry Brown's parole initiative came together

HIGHLIGHTS

- Initiative is only ballot measure Brown plans this year
- Governor consulted, but kept mum on final proposal
- Good behavior credits could apply to broader prison population

1 of 2

BY DAVID SIDERS
dsiders@sacbee.com

For much of last year, Gov. Jerry Brown and his advisers pored over measures that Brown could take to ease fixed-term sentencing standards he signed into law when he was governor before – and came to regret decades later.

"Determinate sentencing," Brown said, had contributed to prison crowding and removed incentives for inmates to rehabilitate themselves. He told his advisers he wanted to restructure how the state awards credits for good behavior, giving inmates a greater chance of parole.

Before he settled on the sweeping prison initiative that he announced on Wednesday, two groups of activists were pressing Brown to support other changes. The first, which Brown rejected, sought to install an independent sentencing commission, an administration official said. The second, concerning juvenile justice, provided the platform for the proposal Brown announced this week.

Juvenile justice advocates had submitted their own, little-noticed initiative in December, seeking to undo provisions of a 2000 ballot measure allowing prosecutors rather than judges to decide when to try teenagers as adults.

After months of talks, Brown joined their effort, adding to their initiative his proposal to make certain nonviolent felons eligible for early parole and, possibly more significantly, to give the Department of Corrections and Rehabilitation authority to award credits for good behavior. Brown said inmates currently have little incentive to rehabilitate themselves while in prison.

Now voters are likely to decide whether they think Brown's effort will better prepare prisoners to re-enter society or instead release more offenders to endanger the community.

The measure - the only ballot initiative Brown plans to propose this year - follows years of angst by the Democratic governor over fixed-term sentencing and a tide turning nationally against tough-on-crime policies of the 20th century. Forty states took action to ease their drug laws between 2009 and 2013, according to the Pew Research Center. President Barack Obama has made prison reform a priority of his final year in office, and Sen. Chuck Grassley, R-Iowa, is advancing a bipartisan effort to reduce mandatory minimum sentences for some crimes.

In California, voters in 2012 revised the state's "three strikes" sentencing law to require that a third strike be a violent or serious felony. Two years later, they approved Proposition 47, reducing penalties for some drug and property crimes.

Brown's proposal would reduce the significance of criminal enhancements that can add years to prison sentences, letting felons convicted of nonviolent offenses seek parole after serving only their base term.

"My sense is this is really close to his heart," said Joan Petersilia, a criminologist and Stanford Law School professor Brown has previously consulted about criminal justice matters. "I think he feels responsible, given the determinate sentencing law that he signed. But I also think he has lived with this now for 40 years and really understands how the determinate sentencing had all of these unintended consequences that he's now trying to reverse."

Many law enforcement officials, while aware of Brown's discussions with juvenile justice groups late last year, said they only learned within the last month that Brown was considering joining onto the measure and changing it to address adult prisoners, as well.

MARK BONINI, PRESIDENT OF THE CHIEF PROBATION OFFICERS OF CALIFORNIA, SAID HE DID NOT KNOW BROWN PLANNED TO ANNOUNCE THE INITIATIVE – OR PRECISELY WHAT IT MIGHT INCLUDE – UNTIL 9:30 P.M. TUESDAY.

In a series of private meetings with sheriffs, chiefs of police and probation officers at the Capitol, Brown and his advisers aired possible changes, most controversially to include violent offenders in the ranks of prisoners eligible for early release.

Amador County Chief Probation Officer Mark Bonini, president of the Chief Probation Officers of California, said he and his colleagues told Brown, "That's just too much."

The governor acknowledged this week that the idea was a "nonstarter."

Bonini said he did not know Brown planned to announce the initiative – or precisely what it might include – until 9:30 p.m. Tuesday, when he was summoned to join Brown for a conference call with reporters the next day. Deacon Clyde Davis, a prison chaplain in Tehachapi, was asked to join the call even later, on Wednesday morning. Both men said they saw the initiative text for the first time that day.

"We were kind of just flying by the seat of our pants thinking that something's going to happen, something's going to happen, what's it going to look like?" Bonini said.

"WE WERE KIND OF JUST FLYING BY THE SEAT OF OUR PANTS THINKING THAT SOMETHING'S GOING TO HAPPEN, SOMETHING'S GOING TO HAPPEN, WHAT'S IT GOING TO LOOK LIKE?

Mark Bonini, president of the Chief Probation Officers of California

Adding onto the juvenile justice initiative, instead of filing a new one, will let Brown start collecting voter signatures sooner at this relatively late date in the election season. If the measure qualifies for the November ballot, as expected, voters could face a raft of public safety-related decisions, possibly involving marijuana, the death penalty, gun control and, now, early parole.

Many law enforcement officials blame increases in crime on the passage of Proposition 47 and are pledging to counter the initiative, appealing to voters' concerns about upticks in crime. Yet they acknowledge difficulty raising money for the campaign.

"We've learned with Prop. 47 that we should have come out earlier, and harder and more organized to be able to get the money to be able to get that message out," said Sacramento County Sheriff Scott Jones, a Republican who is running for Congress.

He called Brown's initiative "terrible," saying the state will only create more crime victims as it uses early-release to manage the size of its prison population.

Daniel Zingale, senior vice president of The California Endowment, said the initiative Brown proposed initiative stems from a "convergence" of Brown's interest in adult sentencing reform and those of activists who first pushed Proposition 47 and then turned their attention to juvenile justice.

"This administration's style is to reach out to people who know something and ask questions,' said Zingale, whose foundation has given grants to some of the groups involved in the juvenile justice effort. "I know they've been turning over every stone and finding out as much as they can learn."

The percentage of Californians who say violence and street crime in their communities is a problem has declined 7 percentage points from a year ago, according to a Public Policy Institute of California poll released Wednesday.

Still, half of adults say crime is either a big problem or somewhat of a problem. And public opinion on ballot measures related to law enforcement can swing quickly. In 2004, an effort to soften three strikes held a major lead in public opinion polls weeks before a television advertising campaign by then-Gov. Arnold Schwarzenegger and an infusion of money from Henry T. Nicholas III, the billionaire co-founder of Broadcom Corp., sank the initiative.

To assist in the effort, Nicholas flew Brown, who was then mayor of Oakland and opposed the measure, to Southern California to produce a radio ad in the garage studio of guitarist Ryan Shuck of the band Orgy.

"Remember that thing? Public opinion turned on a head, turned on a head," said Mark DiCamillo, director of the Field Poll. "Emotional appeals where you raise fears usually have salience to the voters in the midst of a campaign."

> **"IT'S NOT A SLAM DUNK, CERTAINLY, FOR THE GOVERNOR.**
> Mark DiCamillo, director of the Field Poll

For the parole initiative this year, DiCamillo said, "It's not a slam dunk, certainly, for the governor."

The November election in a presidential year is likely to attract high turnout, benefiting Democratic politicians and their causes. Brown, who holds about $24 million in two campaign accounts, will likely be forced to use some of his money defending against a ballot measure threatening his controversial Delta water project. But when asked about financing his prison sentencing measure, Brown said he will do "whatever it takes to get this done."

Richard Temple, a Republican political consultant, said Brown holds a special standing with the electorate as "not just some soft-on-crime guy," but as a former state attorney general with "a track record that makes him credible on doing this."

However, Temple said "there's a different view on public safety right now" with "a lot of local crime uncertainty or uncomfortableness around the state."

He said, "The pendulum will swing back. This is just a matter of time."

Chula Vista police Chief David Bejarano, president of the California Police Chiefs Association, said Brown's initiative "does provide, probably, a better opportunity for an offender to succeed once they've completed their term."

He said that outcome would benefit public safety but remains hesitant.

"Our concern is - and there probably is a need for reform - we just have to be careful we don't swing the pendulum too far one way or the other," he said. "We have to be real careful we don't compromise public safety, we don't go too far."

Statewide, about 7,000 nonviolent prisoners would be eligible for parole consideration under the measure, according to Brown administration estimates. But most of those prisoners - 5,700 - already are eligible for parole consideration under a federal court order.

Brown's proposal for credits for good behavior could have broader reach. The Brown administration said the governor envisions a credit system that could apply to a broader set of prisoners than the limited number he is seeking to make eligible for early parole.

The expansiveness of that system would be determined not through the initiative, but through regulations written after the election.

David Siders: 916-321-1215, @davidsiders. Jim Miller of The Bee Capitol Bureau contributed to this report.

RELATED CONTENT

- Jerry Brown: Old sentencing law had 'unintended consequences'
- Jerry Brown wants to make it easier for non-violent offenders to get parole

Thomas W. Hiltachk (SBN 131215)
tomhl@bmhlaw.com
Brian T. Hildreth (SBN 214131)
bhildreth@bmhlaw.com
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 442-7757
Facsimile: (916) 442-7759

Attorneys for Petitioners
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, and ANNE MARIE SCHUBERT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, and ANNE MARIE SCHUBERT, an individual and in her personal capacity, Petitioners, v. ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA HARRIS, in her official capacity only; and DOES I-X, inclusive, Respondents.	Case No. 34-2016-80002293 **PETITIONERS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE** **IMMEDIATE ACTION REQUIRED: ELECTION LAW MATTER ENTITLED TO CALENDAR PREFERENCE PURSUANT TO C.C.P. § 35, ELECTIONS CODE § 13314** DATE: TIME: DEPT:
MARGARET R. PRINZING and HARRY BEREZIN, Real Parties In Interest.	Petition filed: 02/11/2016

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Petitioners request the Court to take judicial notice of the documents identified herein and attached hereto:

1. Attached hereto as **Exhibit A** is a true and correct copy of Real Parties in Interest's December 22, 2015 submission to the Attorney General's Office of "The Justice and

Rehabilitation Act" requesting a circulating title and summary pursuant to Elections Code section 9001.

2. Attached hereto as **Exhibit B** is a true and correct copy of Real Parties In Interest's purported amended initiative measure (this titled the "Public Safety and Rehabilitation Act of 2016") filed on January 26, 2016 – after the close of the mandatory 30-day public review period.

3. Attached hereto as **Exhibit C** is a true and correct copy of California Bill Analysis, Senate Floor, 2013-2014 Regular Session regarding Senate Bill 1253, August 22, 2014. The analysis clearly summarized the legislative intent of the law was to accept changes to ballot measures that are "consistent with the [measure's] original intent."

4. Attached hereto as **Exhibit D** is a true and correct copy of California Bill Analysis, Assembly Committee on Elections and Redistricting, June 17, 2014 analyzing the amendment option in the legislation as one meant to address "errors in the drafting of" and "correcting flaws" in the text of the proposed measure.

5. Attached hereto as **Exhibit E** is a true and correct copy of a letter from California Common Cause dated March 14, 2014 supporting SB 1253. The letter is stamped as part of the Senate Legislative File on the legislation. In writing in support of the bill, the author of the California Common Cause letter understood that the bill was to "allow legal flaws to be corrected in an initiative before it appears on the ballot."

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code section 452(c) provides that judicial notice may be taken of "...Official acts of the legislative, executive, and judicial departments ... of any state of the United States." Section 452(c) also provides that judicial notice may be taken of any document published, recorded, or filed by any executive or legislative department. (See also generally, *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Moore v. Superior Court* (2004) 117 Cal.App.4th 401, 407 n.5; *Wolfe v. State Farm Casualty & Insurance Company* (1996) 46 Cal.App.4th 554, 567 n. 16; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750; *Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125; *Pan Pacific Properties, Inc. v. County of Santa Cruz* (1978) 81 Cal.App.3d 244, 255, fn. 2.)

Exhibits A through E are each records received, filed and/or maintained by state public agencies and for which judicial notice may be taken.

Dated: February 16, 2016.

BELL, McANDREWS & HILTACHK, LLP

By: _____

THOMAS W. HILTACHK
BRIAN T. HILDRETH

Attorneys for Petitioners,
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION and ANNE MARIE SCHUBERT

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing occurred. The following facts are within my first-hand and personal knowledge and if called as a witness, I could and would testify thereto.

2. My business address is 455 Capitol Mall, Suite 600, Sacramento, CA 95814.

On February 16, 2016, I served the foregoing document entitled

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

on each person named below by enclosing a true copy in an envelope addressed as shown in Item 5 and by:

a. ____ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
b. placing the sealed envelope with postage prepaid for collection and mailing on the date and at the place shown in Item 4 following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. In the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in the place shown in Item 4.
c. ____ transmitting via facsimile to the number(s) during regular business hours.
d. ____ personally serving.
e. X transmitting by email to the offices of the addressee(s) following ordinary business practices during ordinary business hours.
f. ____ causing to be deposited in a sealed envelope with FedEx Overnight Mail.
g. ____ causing to be hand-delivered via a professional courier service.

5. Name and address of each person served:

Counsel:	**Party Represented:**
Connie LeLouis Supervising Deputy Attorney General *Connie.LeLouis@doj.ca.gov* Paul Stein Deputy Attorney General *Paul.Stein@doj.ca.gov* Tamar Pachter Deputy Attorney General *Tamar.Pachter@doj.ca.gov* CALIFORNIA DEPARTMENT OF JUSTICE 1300 I Street Suite 1330 Sacramento , California 95814	Respondent, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, KAMALA HARRIS
James Harrison REMCHO, JOHANSEN & PURCELL, LLP 201 Dolores Avenue San Leandro, CA 94577 Tel: (510) 346-6200 Email: harrison@rjp.com	Real Parties in Interest, MARGARET R. PRINZING and HARRY BEREZIN

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 16, 2016, at Sacramento, California.

CORIANNE DURKEE

EXHIBIT A

15-0121

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: mprinzing@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra

Joseph Remcho (1944-2002)
Kathleen J. Purcell (Ret.)

December 21, 2015

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Justice and Rehabilitation Act*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "The Justice and Rehabilitation Act." The text of the measure, a check for $200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

Margaret R. Prinzing

Enclosure

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: mprinzing@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra

Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

December 21, 2015

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *The Justice and Rehabilitation Act*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "The Justice and Rehabilitation Act." The text of the measure, a check for $200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

Harry A. Berezin

Enclosure

THE JUSTICE AND REHABILITATION ACT

SECTION 1. Title.

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

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

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

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

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

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

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

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

SEC. 3. Purpose and Intent.

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

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

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

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

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

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

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

SEC. 4. Judicial Transfer Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) Murder.~~

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

~~(3) Robbery.~~

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

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

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

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

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

~~(9) Kidnapping for ransom.~~

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

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

~~(12) Attempted murder.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Murder.

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

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

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

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

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

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

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

(I) Kidnapping for ransom.

(J) Kidnapping for purposes of robbery.

(K) Kidnapping with bodily harm.

(L) Attempted murder.

(M) Assault with a firearm or destructive device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. Judicial Remand Hearing.

Section 1170.17 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 6. Additional Amendments Relating To Transfer.

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

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

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

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

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

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

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

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

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

~~(A) Jeopardy has attached.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1170.19 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

SEC. 7. Juvenile Court Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 8. Parole Hearings.

Section 3051 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 9. Amendment.

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

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

SEC. 10. Severability.

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

SEC. 11. Conflicting Initiatives.

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

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

SEC. 12. Proponent Standing.

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

SEC. 13. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

EXHIBIT B

15-0121 Amdt # 1

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: mprinzing@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Juan Carlos Ibarra

Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

January 25, 2016

VIA MESSENGER

RECEIVED

JAN 26 2016

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to Statewide Initiative Measure – The Justice and Rehabilitation Act, No. 15-0121*

Dear Ms. Johansson:

As you know, I am one of the proponents of the proposed statewide initiative, "The Justice and Rehabilitation Act," No. 15-0121. I am enclosing the following documents:

- The amended text of "The Justice and Rehabilitation Act," No. 15-0121;
- A red-line version showing the changes made in the amended text; and
- Signed authorizations from each of the proponents for the submission of the amended text together with their requests that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries or correspondence relative to this proposed initiative as indicated below:

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Thank you for your time and attention to this matter.

Sincerely,

Margaret R. Prinzing

MRP:NL
Enclosures
(00266157)

January 25, 2016

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to The Justice and Rehabilitation Act, No. 15-0121, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

On December 22, 2015, I submitted a proposed statewide initiative titled "The Justice and Rehabilitation Act," No. 15-0121, and submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution.

Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the title and text of the Initiative. As one of the proponents of the initiative, I approve the submission of the amended text to the initiative and I declare that the amendment is reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. I request that the Attorney General prepare a circulating title and summary using the amended language.

Sincerely,

Margaret R. Prinzing

Enclosures
(00266162)

January 25, 2016

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Submission of Amendment to The Justice and Rehabilitation Act, No. 15-0121, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

On December 22, 2015, I submitted a proposed statewide initiative titled "The Justice and Rehabilitation Act," No. 15-0121, and submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution.

Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the title and text of the Initiative. As one of the proponents of the initiative, I approve the submission of the amended text to the initiative and I declare that the amendment is reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. I request that the Attorney General prepare a circulating title and summary using the amended language.

Sincerely,

Harry Berezin

Enclosures
(00266171)

THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016

SECTION 1. Title.

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

SEC. 2. Purpose and Intent.

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

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

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

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

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

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

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

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

SEC. 4. Judicial Transfer Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Murder.

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

(3) Robbery.

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

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

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

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

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

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. Amendment.

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

SEC. 6. Severability.

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

SEC. 7. Conflicting Initiatives.

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

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

SEC. 8. Proponent Standing.

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

SEC. 9. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

EXHIBIT C

CA B. An., S.B. 1253 Sen., 8/22/2014

California Bill Analysis, Senate Floor, 2013-2014 Regular Session, Senate Bill 1253

August 22, 2014
California Senate
2013-2014 Regular Session

_ -- §SENATE RULES COMMITTEE § SB 1253§ §Office of Senate Floor Analyses § § §1020 N Street, Suite 524 § § §(916) 651-1520 Fax: (916) § § §327-4478 § § -- UNFINISHED BUSINESS

Bill No: SB 1253

Author: Steinberg (D), et al.

Amended: 8/22/14

Vote: 21

SENATE ELECTIONS & CONSTITUTIONAL AMEND. COMM. : 4-1, 4/22/14 AYES: Torres, Hancock, Jackson, Padilla NOES: Anderson

SENATE APPROPRIATIONS COMMITTEE : 5-2, 5/23/14 AYES: De León, Hill, Lara, Padilla, Steinberg NOES: Walters, Gaines

SENATE FLOOR : 29-8, 5/29/14 AYES: Beall, Berryhill, Block, Cannella, Corbett, Correa, De León, DeSaulnier, Evans, Galgiani, Hancock, Hernandez, Hill, Hueso, Huff, Jackson, Lara, Leno, Lieu, Liu, Mitchell, Monning, Padilla, Pavley, Roth, Steinberg, Torres, Wolk, Wyland NOES: Anderson, Fuller, Gaines, Knight, Morrell, Nielsen, Vidak, Walters NO VOTE RECORDED: Calderon, Wright, Yee

ASSEMBLY FLOOR : 55-23, 8/27/14 - See last page for vote

SUBJECT : Initiative measures

SOURCE : California Common Cause League of Women Voters of California CONTINUED

DIGEST : This bill makes several changes to the initiative process including providing a 30-day public review process, extending the timeframe allowed for circulating a petition, and allowing the withdrawal of a petition at any time before the measure qualifies for the ballot; and makes several other changes to the procedures and requirements for placing an initiative petition measure on the ballot.

Assembly Amendments add coauthors; require the Secretary of State (SOS) to identify the date of the next statewide election and, on the 131st day prior to that election, to issue a certificate of qualification certifying that the initiative measure is qualified for the ballot at that election; provide that the initiative measure will be deemed qualified for the ballot for purposes of specified provisions of the California Constitution; clarify proponents of the proposed initiative measure may submit amendments to the measure that further its purposes; require the fiscal estimate to be delivered within 50 days of the date of receipt of the proposed measure by the Attorney General, instead of 25 working days, as specified; add double-jointing language with AB 2219 (Fong), SB 1043 (Torres), and SB 844 (Pavley); add contingent enactment language to avoid implementation problems with SB 1442 (Lara); and make other conforming and technical changes.

ANALYSIS : Existing law: 1.Establishes specific procedures and requirements for placing an initiative petition measure on the ballot. 2.Requires the SOS to transmit copies of an initiative measure and its circulating title and summary to the Senate and the Assembly after the measure is certified to appear on the ballot for consideration by the voters. 3.Requires that each house

of the Legislature assign the initiative measure to its appropriate committees, and that the committees hold joint public hearings on the subject of the proposed measure prior to the date of the election at which the measure is to be voted upon, as specified. 4.Requires the SOS to disseminate the complete state ballot pamphlet over the Internet and to establish a process to enable a voter to opt out of receiving the state ballot pamphlet by mail. 5.Requires the SOS to develop a program to utilize modern communications and information processing technology to enhance the availability and accessibility of information on statewide candidates and ballot initiatives, including making information available online as well as through other information processing technology. 6.Authorizes the proponents of a statewide initiative or referendum measure to withdraw the measure at any time before filing the petition with the appropriate elections official. 7.Requires that state initiative petitions circulated for signature include a prescribed notice to the public. 8.Makes certain activities relating to the circulation of an initiative referendum, or recall petition a criminal offense. This bill:

1. Makes minor modifications to provisions of law that prescribe how words are counted for the purposes of various provisions of the Elections Code, including for the word limit on a ballot title and summary.
2. Requires the Attorney General (AG), upon the receipt of a request from the proponents of a proposed initiative measure for a circulating title and summary, to initiate a public review process for a period of 30 days, as specified.
3. Permits proponents of the proposed initiative measure, during the public review period, to submit amendments to the measure, as specified, that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed. Prohibits amendments from being submitted if the initiative measure as originally proposed would not effect a substantive change in law.
4. Deletes provisions of law that require the fiscal estimate or opinion of the proposed initiative measure be prepared by the Department of Finance (DOF) and the Joint Legislative Budget Committee and instead requires the estimate to be prepared by the DOF and the Legislative Analyst. Requires the fiscal estimate to be delivered to the AG within 50 days of the date of receipt of the proposed measure by the AG, instead of 25 working days from the date the AG receives the final version of the proposed measure.
5. Extends the period of time that a proposed initiative measure petition may be circulated from 150 days to 180 days.
6. Requires the proponents of a proposed initiative measure to submit a certification, signed under penalty of perjury, to SOS immediately upon the collection of 25% of the number of signatures needed to qualify the initiative measure for the ballot.
7. Deletes provisions of law that require Senate and Assembly committees to hold a joint public hearing on the subject of each initiative measure that qualifies for the ballot before the 30th day prior to the date of the election, and instead requires the committees to hold the hearing after the proponents certify that they have collected 25% of the number of required signatures, but not later than 131 days before the date of the election at which the measure is to be voted upon.
8. Permits proponents of a statewide initiative or referendum measure to withdraw the measure after filing the petition with the appropriate elections official at any time before the 131st day before the election at which the measure will appear on the ballot.
9. Requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure in a manner that is easy for voters to access and understand, as specified. 10.Requires the SOS to establish processes to enable a voter to do both of the following:

A. Opt out of receiving the state ballot pamphlet by mail pursuant to existing law; and
B. When the state ballot pamphlet is available, to receive either the state ballot pamphlet in an electronic format or an electronic notification making the pamphlet available by means of online access.

1. Requires the processes described above to become effective only after the SOS has certified that the state has a statewide voter registration database that complies with the federal Help America Vote Act of 2002.
2. Makes it a crime, for a proponent of a statewide initiative measure to seek, solicit, bargain for, or obtain any money or thing of value of or from any person, firm, or corporation for the purpose of withdrawing an initiative petition after filing it with the appropriate elections official.
3. Makes other conforming changes.
4. Contains double-jointing language to avoid chaptering problems with AB 2219 (Fong), SB 844 (Pavley), and SB 1043 (Torres) of the current legislative session.
5. Contains contingent enactment language to avoid implementation problems with SB 1442 (Lara) of the current legislative session.
6. Makes findings and declarations regarding initiative measures, also known as ballot measures or propositions, allow California voters to participate directly in lawmaking. California voters have enjoyed the right to enact laws through the initiative process since 1911. However, many voters find it difficult to understand the language of an initiative measure and to learn who is behind an initiative measure.

Background

The Initiative and Referendum Institute . According to the iandrinstitute.org, although the initiative process is different in every state, there are certain aspects of the process that are common to all. The five basic steps to any initiative are: Preliminary filing of a proposed initiative with a designated state official; Review of the initiative for compliance with statutory requirements prior to circulation; Circulation of the petition to obtain the required number of signatures; Submission of the petition signatures to the state elections official for verification of the signatures; and The placement of the initiative on the ballot and subsequent vote. The following is a national comparison on pre-circulation filing requirements and review processes: Prior to circulating a petition, the proposed initiative and a request to circulate must be submitted to the designated public officer such as the Lieutenant Governor, Attorney General or Secretary of State for approval. Nine states require the proposed initiative to be submitted with a certain number of signatures, ranging from five in Montana to 100 in Alaska. Five states require a deposit that is refunded when the completed petition has been filed. Depending, on the state the petition may be reviewed for form, language and/or constitutionality. Ten states require the Secretary of State's office or the Attorney General to review initiatives for proper form only. Twelve states require some form of pre-circulation/certification review regarding language, content or constitutionality. However, in all but four of these states, the results of the review are advisory only. In Arkansas, the Attorney General has authority to reject a proposal if it utilizes misleading terminology. In Utah, the Attorney General can reject an initiative if it is patently unconstitutional, nonsensical, or if the proposed law could not become law if passed. In Oregon, the Attorney General can stop an initiative from circulating if he believes it violates the single amendment provision for initiatives and in Florida, the State Supreme Court, during its mandatory review, can stop an initiative if it is unconstitutional or violates the state's very strict single subject requirement. Circulation periods range from as brief as 64 days in Massachusetts to an unlimited duration, though there are limits on how long a petition signature is valid. Most states also have deadlines for submitting initiative petitions, so that officials will have time to verify the signatures, publish the initiative, and prepare the ballot. Arkansas, Ohio and Utah have no time limit for signature gathering. Oklahoma at 90 days, California at 150 days, and Massachusetts at 64 days have the shortest circulation periods. It is unknown if any of the 24 states provides opportunity during the process for the proponent to withdraw a proposal at any time before the measure qualifies for the ballot.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes According to the Assembly Appropriations Committee: The SOS will incur minor additional costs ($40,000 annually) to create a website and update information on each ballot measure. All other administrative costs to the SOS will be minor and absorbable. Extending the petition circulation period by 30 days will increase the likelihood that more measures will qualify for the ballot. On the other hand, providing the opportunity for legislative review during the circulation period could lead to agreements with the Legislature and withdrawal of some measures from circulation. The net impact of these two changes is unknown, however, the average cost for including in the state ballot pamphlet the text, analysis, and arguments for and against a measure are around $600,000 per measure. The SOS anticipates minor costs to notify voters electronically that the state ballot pamphlet is available

SUPPORT : (Verified 8/27/14) California Common Cause (co-source) League of Women Voters of California (co-source) AARP AAUW Bay Area Council California Business Roundtable California Calls California Chamber of Commerce California Council of Church IMPACT California Democratic Party California Forward Action Fund California School Employees Association California State Employees Association Chino Valley Dem Club Dems of North Orange County Laguna Woods Democratic Club Los Angeles Business Council NAACP RFK Democratic Club San Gabriel Valley Democratic Women's Club Sonoma County Democratic Club Think Long Committee for California Yucaipa-Calimesa Democratic Club

OPPOSITION : (Verified 8/27/14) California Teachers Association

ARGUMENTS IN SUPPORT : According to the author: The changes in this bill are similar to the recommendations made twenty years ago by the Citizen's Commission on Ballot Initiatives. The current 150 days to gather signature does not provide enough time for public input or changes to the initiative language. This bill extends the time allowed to gather signatures and establishes a prequalification process. The prequalification process includes the ability to amend an initiative before it appears on the ballot as long as the changes are consistent with the original intent. The prequalification process also engages the Legislature earlier in the process. Presently, there is not a sufficient review process of initiatives by the public or the Legislature where either is able to provide greater input and suggest amendments or correct flaws before the measure is printed on the ballot. Implementing a better public review process before the title and summary process by the AG and allowing the Legislature to hold a hearing after 25% of signatures are collected helps address this deficiency. Also, the concern that voters are asked to decide important issues through the initiative process without adequate information is real. This bill aims to provide clearer and more thorough information. Another problem in current law is inability for a proponent to withdraw their own initiative. As described in the previous section, if a proponent of an initiative pursues an alternative path to solving an issue -

specifically through compromise through the legislative process - there is no mechanism for the proponent to remove their own ballot initiative after it's been qualified.

ARGUMENTS IN OPPOSITION : The California Teachers Association states in opposition, "Our State Council of Education members expressed grave concerns about the extension of time SB 1253 authorizes the circulation of a proposed initiative given that previous initiative proposals have resulted in a variety of 'unintended consequences' including but not limited to the opportunity for non-legal campaign contributions to influence election outcomes; the increased possibility of fraud in the signature gathering process; and the likelihood that initiatives that adversely affect 'good government' will qualify for the ballot."

ASSEMBLY FLOOR : 55-23, 8/27/14 AYES: Alejo, Ammiano, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Dababneh, Daly, Dickinson, Eggman, Fong, Frazier, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Hall, Roger Hernández, Holden, Jones-Sawyer, Levine, Lowenthal, Medina, Mullin, Muratsuchi, Nazarian, Olsen, Pan, Perea, John
A. Peŕez, V. Manuel Peŕez, Quirk, Quirk-Silva, Rendon, Ridley-Thomas, Rodriguez, Salas, Skinner, Stone, Ting, Weber, Wieckowski, Williams, Yamada, Atkins NOES: Achadjian, Allen, Bigelow, Chávez, Conway, Dahle, Donnelly, Fox, Beth Gaines, Gonzalez, Grove, Hagman, Jones, Linder, Logue, Maienschein, Mansoor, Melendez, Nestande, Patterson, Wagner, Waldron, Wilk NO VOTE RECORDED: Harkey, Vacancy RM:nl 8/27/14 Senate Floor Analyses SUPPORT/OPPOSITION: SEE ABOVE **** END ****

CA B. An., S.B. 1253 Sen., 8/22/2014

End of Document

EXHIBIT D

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 1253 (Steinberg) – As Amended: June 17, 2014

SENATE VOTE: 29-8

SUBJECT: Initiative measures.

SUMMARY: Makes significant changes to the initiative process. Specifically, this bill:

1) Makes minor modifications to provisions of law that prescribe how words are counted for the purposes of various provisions of the Elections Code, including for the word limit on a ballot title and summary.

2) Requires the Attorney General (AG), upon the receipt of a request from the proponents of a proposed initiative measure for a circulating title and summary, to initiate a public review process for a period of 30 days by doing all of the following:

   a) Posting the text of the proposed initiative measure on the AG's Internet Web site; and,

   b) Inviting, and providing for the submission of, written public comments on the proposed initiative measure on the AG's Internet Web site. Requires the site to accept written public comments for the duration of the public review period. Requires the written comments to be public records, available for inspection upon request pursuant to existing law, but prohibits the written comments from being displayed to the public on the AG's Internet Web site during the public review period. Requires the AG to transmit any written public comments received during the public review period to the proponents of the proposed initiative measure.

3) Permits proponents of the proposed initiative measure, during the public review period, to submit amendments to the measure. Prohibits the submission of an amendment from extending the period to prepare the fiscal estimate required by current law. Prohibits an amendment from being accepted more than five days after the public review period is concluded. Provides that a proponent shall not be prohibited from proposing a new initiative measure and requesting that a circulating title and summary be prepared for that measure pursuant to existing law.

4) Deletes provisions of law that require the fiscal estimate or opinion of the proposed initiative measure be prepared by the Department of Finance (DOF) and the Joint Legislative Budget Committee (JLBC) and instead requires the estimate to be prepared by the DOF and the Legislative Analyst. Requires the fiscal estimate to be delivered to the AG within 50 days of the date of receipt of the proposed measure by the AG, instead of 25 working days from the date the AG receives the *final version* of the proposed measure.

5) Requires the ballot title and summary to satisfy all of the following:

a) Be written in clear and concise terms, understandable to the average voter, and in an objective and nonpartisan manner, avoiding the use of technical terms whenever possible;

b) If the measure imposes or increases a tax or fee, the type and amount of the tax or fee must be described;

c) If the measure repeals existing law in an substantial manner, that fact shall be included; and,

d) If the measure is contingent on the passage or defeat of another measure or statute, that fact shall be included.

6) Requires the AG to invite and consider public comment in preparing each ballot title and summary.

7) Requires the Legislature to provide the AG with sufficient funding for administrative and other support relating to preparation of the ballot title and summary for initiative measures, including, but not limited to, plain-language specialists.

8) Extends the period of time that a proposed initiative measure petition may be circulated from 150 days to 180 days.

9) Requires the proponents of a proposed initiative measure to submit certification, signed under penalty of perjury, to the Secretary of State (SOS) immediately upon the collection of 25 percent of the number of signatures needed to qualify the initiative measure for the ballot.

10) Deletes provisions of law that require a proposed initiative or referendum measure petition to be deemed filed and qualified on the date the SOS receives a certificate or certificates from all the county elections officials showing the petition is signed by the requisite number of voters of the state and instead provides that upon the issuance of a certificate of qualification, an initiative or referendum measure is deemed qualified for the ballot.

11) Requires the SOS, in the case of an initiative measure, to identify the date of the next statewide general election as defined by current law, or the next statewide special election, that will occur not less than 131 days after the date the SOS receives a petition certified to have been signed by the requisite number of voters.

12) Requires the SOS, on the 131st day prior to the date of the election identified, to do all of the following:

a) Issue a certificate of qualification certifying that the initiative measure, as of that date, is qualified for the ballot at the election identified;

b) Notify the proponents of the initiative measure and the elections official of each county that the measure, as of that date, is qualified for the ballot at the election identified; and,

c) Include the initiative measure in a list of all statewide initiative measures that are eligible to be placed on the ballot at the election identified and publish the list on the SOS's

Internet Web site.

13) Requires the SOS, in the case of a referendum measure, upon the receipt of a petition certified to have been signed by the requisite number of qualified voters, to do all of the following:

a) Issue a certificate of qualification certifying that the referendum measure, as of that date, is qualified for the ballot;

b) Notify the proponents of the referendum measure and the elections official of each county that the measure, as of that date, is qualified for the ballot; and

c) Include the referendum measure in a list of all statewide referendum measures that are qualified for the ballot and publish the list on the SOS's Internet Web site.

14) Permits proponents of a statewide initiative or referendum measure to withdraw the measure after filing the petition with the appropriate elections official at any time before the measure qualifies for the ballot.

15) Requires a state or local initiative petition to contain a statement informing voters that the proponents have the right to withdraw the petition at any time before the SOS certifies that the measure has qualified for the ballot.

16) Deletes provisions of law that require Senate and Assembly committees to hold a joint public hearing on the subject of each initiative measure that qualifies for the ballot before the 30th day prior to the date of the election and instead requires the Senate and Assembly committees to hold a joint public hearing on the subject of each initiative measure not later than 131 days before the date of the election at which the measure is to be voted upon.

17) Requires the SOS to create an Internet Web site, or use other available technology, to consolidate information about each state ballot measure in a manner that is easy for voters to access and understand. Requires the information to include all of the following:

a) A summary of the ballot measure's content;

b) A current list of the top 10 contributors supporting and opposing the ballot measure, as compiled by the Fair Political Practices Commission (FPPC) pursuant to existing law;

c) A list of each committee primarily formed to support or oppose the ballot measure pursuant to existing law, and a means to access information about the sources of contributions reported to each committee; and,

d) Any other information deemed relevant by the SOS.

18) Requires information about sources of contributions to be updated as new information becomes available to the public pursuant to existing law.

19) Requires the SOS, if a committee identified above receives at least one million dollars ($1,000,000) in contributions for an election, to provide a means to access online information

about the committee's top 10 contributors reported to the FPPC pursuant to current law. Requires the FPPC to automatically provide any list of top 10 contributors, and any subsequent updates to that list, to the SOS for purposes of compliance with this section.

20) Extends the time period that the SOS must make the ballot pamphlet available for public examination from 20 days to 25 days.

21) Requires the SOS to establish processes to enable a voter to do both of the following:

a) Opt out of receiving the state ballot pamphlet by mail pursuant to existing law; and

b) When the state ballot pamphlet is available, to receive either the state ballot pamphlet in an electronic format or an electronic notification making the pamphlet available by means of online access.

22) Requires the processes described above to become effective only after the SOS has certified that the state has a statewide voter registration database that complies with the federal Help America Vote Act of 2002 (HAVA).

23) Makes it a crime for a proponent of a statewide initiative measure to seek, solicit, bargain for, or obtain any money or thing of value of or from any person, firm, or corporation for the purposes of withdrawing an initiative petition after filing it with the appropriate elections official.

24) Makes other conforming changes.

25) Creates the Ballot Initiative Transparency Act (Act) and makes the following Legislative findings and declarations:

a) Initiative measures, also known as ballot measures or propositions, allow California voters to participate directly in lawmaking. California voters have enjoyed the right to enact laws through the initiative process since 1911. However, many voters find it difficult to understand the language of an initiative measure and to learn who is behind an initiative measure.

b) States the intent of the Legislature in enacting this Act is to update the initiative process, which is more than 100 years old, by doing all of the following:

i) Providing voters with more useful information so that they are able to make an informed decision about an initiative measure. Under this Act, the SOS will be required to give voters one-stop access to a clear explanation of each measure and information about the individuals and groups behind each measure. This gives voters updated information about who is spending large sums of money to support or oppose each initiative measure. Voters will also be allowed to request an electronic copy of ballot materials, thereby reducing the expenses of printing and mailing.

ii) Providing a voter-friendly explanation of each initiative measure. This Act requires that ballot materials be drafted in clear and impartial language.

iii) Identifying and correcting flaws in an initiative measure before it appears on the ballot. Currently, proponents of an initiative measure have few options to correct the language of an initiative measure or to withdraw a petition for a proposed initiative measure, even when flaws are identified. This Act gives voters an opportunity to comment on an initiative measure before the petition is circulated for signatures. Public comment may address perceived errors in the drafting of, or perceived unintended consequences of, the proposed initiative measure. By extending the time for gathering signatures, this Act will give the Legislature the opportunity to hold earlier public hearings to review initiative measures. This Act also allows the proponents of an initiative measure to withdraw the measure after the petition and signatures are submitted to elections officials, but before the measure qualifies for the ballot.

EXISTING LAW:

1) Defines a ballot title and summary to mean the summary of the chief purpose and points, including the fiscal impact summary, of any measure that appears in the state ballot pamphlet.

2) Defines a circulating title and summary to mean the text that is required to be placed on the petition for signatures that is either of the following:

   a) The summary of the chief purpose and points of a proposed initiative measure that affects the Constitution or laws of the state, and the fiscal impact of the proposed initiative measure; or,

   b) The summary of the chief purpose and points of a referendum measure that affects a law or laws of the state.

3) Requires the proponents of a proposed initiative or referendum measure to submit the text of the proposed measure to the AG with a written request that a circulating title and summary of the measure be prepared, prior to circulating the petition for signatures. Requires proponents of any initiative measure, at the time of submitting the text of the proposed initiative measure to the AG, to pay a fee of two hundred dollars ($200).

4) Requires the AG to give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument nor be likely to create prejudice, for or against that proposed measure.

5) Requires the AG to provide a copy of the circulating title and summary to the SOS within 15 days after receipt of the final version of a proposed initiative measure, or if a fiscal estimate or opinion is to be included, within 15 days after receipt of the fiscal estimate or opinion prepared by the DOF and the JLBC. Requires the DOF and the JLBC to deliver the fiscal estimate to the AG within 25 working days from the date of receipt of the final version of the proposed measure.

6) Requires the SOS, upon request of the proponents of an initiative measure which is to be submitted to the voters, to review the provisions of the initiative measure after it is prepared prior to its circulation. Requires the SOS, in conducting the review, to analyze and comment

on the provisions of the measure with respect to form and language clarity and request and obtain a statement of fiscal impact from the Legislative Analyst. Provides that the review performed shall be for the purpose of suggestion only and shall not have any binding effect on the proponents of the initiative measure.

7) Requires the Legislative Counsel to cooperate with the proponents of an initiative measure in its preparation when requested in writing by 25 or more electors proposing the measure when, in the judgment of the Legislative Counsel, there is reasonable probability that the measure will be submitted to the voters of the State under the laws relating to the submission of initiatives.

8) Allows the proponents of a proposed initiative measure to amend the proposed measure prior to the preparation of a circulating title and summary, as specified.

9) Defines official summary date to mean the date a circulating title and summary of a proposed initiative measure is delivered or mailed by the AG to the proponents of the proposed measure.

10) Prohibits a petition for a proposed statewide initiative or referendum from being circulated prior to the official summary date. Requires a petition with signatures on a proposed initiative measure to be filed with the county elections official no later than 150 days from the official summary date.

11) Requires that state initiative petitions circulated for signature to include a prescribed notice to the public.

12) Provides that an initiative or referendum measure petition is deemed filed and the measure qualified on the date that the SOS receives certificates from all of the county elections officials showing that the petition has been signed by the requisite number of voters.

13) Requires the SOS to notify the proponents, and immediately transmit to the elections official or registrar of voter of every county or city and county in the state a certificate, when the SOS has received from one or more elections officials or registrars a petition certified to have been signed by the requisite number of qualified voters.

14) Requires the SOS, upon certification of an initiative measure to appear on the ballot, to transmit copies of an initiative measure and its circulating title and summary to the Senate and the Assembly.

15) Requires that each house of the Legislature assign the initiative measure to its appropriate committees. Requires the committees to hold a joint public hearing on the subject of the proposed measure prior to the date of the election at which the measure is to be voted upon. Prohibits a hearing from being held within 30 days prior to the date of the election.

16) Authorizes the proponents of a statewide initiative or referendum measure to withdraw the measure at any time before filing the petition with the appropriate elections official, as specified.

17) Requires the SOS to submit an initiative measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. Permits the Governor to call a special statewide election for the measure.

18) Requires the SOS to submit a referendum measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. Permits the Governor to call a special statewide election for the measure.

19) Provides that a "general election" means only the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year with respect to an initiative or referendum, as specified. Prohibits an initiative measure from being submitted to the voters at a statewide special election held less than 131 days after the date the measure is certified for the ballot.

20) Requires the SOS to disseminate the complete state ballot pamphlet over the Internet.

21) Requires the SOS to establish a process to enable a voter to opt out of receiving the state ballot pamphlet by mail, as specified. Requires this process to become effective only after the SOS certifies that the state has a statewide voter registration database that complies with the HAVA.

22) Requires the SOS to develop a program to utilize modern communications and information processing technology to enhance the availability and accessibility of information on statewide candidates and ballot initiatives, including making information available online as well as through other information processing technology.

23) Makes certain activities relating to the circulation of an initiative, referendum, or recall petition a criminal offense.

24) Requires a committee that is primarily formed to support or oppose a state ballot measure or state candidate, and that raises one million dollars ($1,000,000) or more for an election, to maintain an accurate list of the committee's top 10 contributors, as specified by the FPPC. Requires a current list of the top 10 contributors to be disclosed on the FPPC's Internet Web site, as specified. Requires the FPPC to update the top 10 contributor list as specified. Requires the FPPC to adopt regulations to govern the manner in which the FPPC displays to top 10 contributor lists. Requires the FPPC to provide the top 10 contributor lists to the SOS, upon request of the SOS, for the purpose of additionally posting the contributor lists on the SOS's Internet Web site.

25) Requires the FPPC to compile, maintain, and display on its Internet Web site a current list of the top contributors supporting and opposing each state ballot measure, as specified.

26) Requires the state ballot pamphlet to contain a written explanation of the top 10 contributor lists described above, including a description of the Internet Web site where the lists are available to the public.

FISCAL EFFECT: According to the Senate Appropriations Committee, annual costs of $114,326 to AG's office. (General Fund)

The AG's office indicates the need for one Personnel Year (PY) at Associate Governmental Program Analyst position to handle the additional workload related to monitoring the required public comment section and associated duties.

The SOS has indicated that amending the initiative qualification process will have minor cost implications for providing notice to the Legislature and providing a certification of all voter initiated measures that qualify for the ballot.

Existing law requires the SOS, upon the completion of VoteCal, to establish a process to allow voters to opt-out of receiving the Voter Information Guide (VIG). This bill would require that, when opting out, the voter would have the option to receive the VIG "in an electronic format." If this is interpreted to mean the SOS will be required to email the VIG to voters electing this option, numerous changes to VoteCal and county election management systems (EMS) would be required. A website function would need to be developed for voters to choose a VIG delivery option of paper, email, or no delivery. Both VoteCal and the county EMS would need to be modified to capture email addresses and store VIG delivery options. Other system changes include the voter registration interface between VoteCal and the EMS, functions for elections officials to extract email addresses, record in the voter record system activity, and more. The costs to modify VoteCal and county EMS systems to send the VIG electronically to those opting out are estimated to be $500,000.

To the degree that voters elected to either not receive the VIG or to receive it in electronic format, there would be unknown, but significant, printing and postage cost savings.

Additionally, the SOS indicates the need for two PY's with a first year cost of $215,000 and $205,000 ongoing relating to the provision requiring the online posting of consolidated ballot measure summaries and the top 10 donors.

COMMENTS:

1) Purpose of the Bill: According to the author:

> Californians, in 1911, won the right to enact legislation through the initiative process, giving them the power equal to the legislative branch of government. The initiative process has been a well-used tool for Californians to act on a broad range of issues. In recent years, voters have been asked to decide on an increasing number of highly complex, sometimes confusing initiatives. Although voters overwhelmingly continue to support the initiative process, they're becoming increasingly concerned over various aspects.
>
> The Public Policy Institute of California's (PPIC) 2013 Statewide Survey results substantiated the public's desire to maintain the initiative process but with targeted improvements. The PPIC survey found that 83% of voters "say the wording of initiatives is often too complicated," 75% of voters favor "giving initiative sponsors more time to qualify initiatives if they use only volunteers to gather signatures," and 77% of voters "support a review and revision process to avoid legal issues and drafting errors."
>
> Over the years, the use of the initiative has swelled in frequency – 112 propositions have been put before voters since 2002 – and complexity. Both are major concerns among

voters. SB 1253 would require ballot title and summaries to be written in non-technical terms that are easily understood by voters.

Additionally, SB 1253 establishes a mechanism for public input on changes to an initiative before it qualifies for the ballot. Currently no such mechanism exists. For example, in 1996, Proposition 212 – an ethics and campaign reform initiative – included an unintended provision that repealed a ban on gifts to legislators and other public officials. Unfortunately, proponents were not allowed to fix their mistake and the initiative failed.

There is also no mechanism for a proponent to remove a ballot initiative in the event the proponent comes to some form of negotiated resolution. Such an instance occurred in 2004. The League of Cities qualified a local government protection initiative (Proposition 65) on the ballot. Before the election, they then came to a compromise through a separate measure with the Legislature and Governor, which also went on the same ballot as Prop 1A. There was no way for the League of Cities to remove Prop 65, resulting in them actively opposing it and supporting Prop 1A.

There have been many discussions about the initiative process and possible improvements. SB 1253 takes a reasonable approach to initiative reform that addresses the concerns many Californians have voiced with the current system.

2) AG's Process for Preparing Ballot Summaries and Titles: Before circulating a measure, current law requires initiative proponents to first submit a draft of the proposed initiative or referendum measure to the AG with a written request that a circulating title and summary of the chief purpose of the points of the measure be prepared. At the time of submitting the draft, current law requires the proponents to pay a $200 fee. Upon receipt of the fee and request, the AG is required to prepare a circulating title, which will be the official title and summary of the proposed measure. In addition, existing law requires the AG to provide a copy of the title and summary to the SOS within 15 days after receipt of the final version of the proposed initiative measure. If during that 15-day period, if the proponents submit amendments, other than technical, non-substantive amendments, to the initiative measure, the AG must submit the title and summary to the SOS within 15 days after receipt of such amendments. In addition, if a fiscal estimate or opinion is required, additional time is allotted and existing law requires the DOF and the JLBC to jointly prepare an estimate, as specified, within 25 working days from the date they receive the final version of the proposed measure. In practice, the Legislative Analyst typically prepares the fiscal estimate on behalf of the JLBC, and that estimate is reviewed and approved by the DOF.

   When the official title and summary is complete, the AG sends it and the text of the measure to the Senate and the Assembly. The Legislature may conduct public hearings on the proposed initiative measure but cannot amend it.

   This bill conforms state law to existing practice by requiring the DOF and the Legislative Analyst to prepare the fiscal estimate. In addition, this bill increases the time period allotted for the fiscal analysis to be prepared from 25 working days to 50 days.

3) Public Comment: In addition to the changes mentioned above, this bill makes other substantial changes to the AG's process. This bill adds a 30 day public review period and

requires the AG to post the text of the proposed initiative measure on the AG's Internet Web site and provide for the submission of written public comments on the proposed initiative measure. However, this bill prohibits the written comments from being displayed to the public and instead requires the AG to transmit the written public comments to the proponents of the measure. According to the author, this establishes a mechanism for the public to provide input on changes to an initiative that could help fix perceived drafting errors and avert perceived unintended consequences of the proposed initiative measure.

While the author's goal is laudable, nothing in current law prohibits proponents from posting the initiative text online for public comment. In addition, there are other avenues in which initiative proponents can obtain assistance when drafting the text of their proposed initiative measure. Current law permits initiative measure proponents to obtain assistance from the Office of the Legislative Counsel in drafting the language of the proposed law. In order to do so, the proponents must obtain the signatures of 25 or more electors on a request for a draft of the proposed law before submitting their proposal to the Legislative Counsel. Moreover, current law allows initiative proponents to submit the text of their proposed initiative measure to the SOS for review, as specified. Finally, proponents are permitted to seek the assistance of their own private counsel to help draft the text of the proposed law. In practice, initiative proponents with greater financial resources tend to use private counsel or legal firms that specialize in certain issue areas, such as the Political Reform Act, when drafting the text of a proposed initiative.

4) Possibility of "Spot" Initiatives: During the public review period, this bill permits proponents of a proposed initiative measure to submit amendments to the measure. However, this bill does not place any limitation on the amendments submitted by the proponents. Consequently, this bill does not prevent a proponent from receiving public comments on the text of a "spot" initiative, and then submitting a substantially revised initiative text to the AG after the 30 day public comment period for the ballot title and summary preparation. This scenario renders the public review process meaningless. Moreover, the proponents of a proposed measure could do this and circumvent paying another $200 filing fee.

   Furthermore, because this bill does not prevent the submission of a "spot" initiative, the time period that the Legislative Analyst and DOF have to prepare the fiscal estimate could be negatively impacted. This bill, which extends the time for the DOF and the Legislative Analyst to prepare the fiscal estimate from 25 working days to 50 days, also permits the proponents to submit amendments 5 days after the 30 day public review period. As a result, if the proponents submit an amendment that substantively changes the initiative text, the DOF and Legislative Analyst will only have 15 days to prepare a new fiscal estimate.

5) New Title and Summary Criteria: When the AG is drafting the title and summary for a proposed initiative measure, current law requires the AG to give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument nor be likely to create prejudice, for or against that proposed measure. This bill adds substantial new requirements on how a ballot title and summary must be drafted. This bill requires the ballot title and summary to satisfy all of the following criteria: 1) be written in clear and concise terms, understandable to the average voter, and in an objective and nonpartisan manner, avoiding the use of technical terms whenever possible, 2) include the type and amount of the tax and fee if the measure imposes or increases a tax or fee, 3) indicate whether the measure repeals existing law in any substantial manner, and 4)

indicate whether the measure is contingent on the passage or defeat of another measure or statute. According to the author, this bill aims to result in ballot titles and summaries that are written in non-technical terms that are easily understood by voters. Notwithstanding the author's goal, these new criteria are ambiguous and subjective, and consequently could result in more litigation surrounding the ballot titles and summaries created by the AG.

6) Initiative and Referendum Qualification Changes: Current law provides that an initiative or referendum measure petition is deemed filed and the measure qualified on the date that the SOS receives certificates from all of the county elections officials showing that the petition has been signed by the requisite number of voters. This bill makes significant changes to that process and instead provides for a two-step process for initiative measures. The first step requires the SOS to identify the date of the next statewide general election or the next statewide special election that will occur not less than 131 days after the date the SOS receives a petition certified to have been signed by the requisite number of qualified voters. Secondly, the SOS waits until the 131st day prior to the date of the election identified to issue a certificate of qualification that the measure, as of that date, is qualified for the ballot at the election identified. Under the provisions of this bill, an initiative or referendum measure is deemed to be qualified for the ballot upon the issuance of a certificate of qualification by the SOS, instead of being qualified on the date that the SOS receives certificates from all of the county elections officials showing that the petition has been signed by the requisite number of voters.

   There could be a significant amount of time between the date when the SOS receives certificates certifying that the requisite number of voters had signed the petition and the 131st day prior to the date of the election identified by the SOS. According to the author, this two-step process is designed to increase the time between the completion of the verification of signatures on a petition and the date that the measure is technically qualified to appear on the ballot. Allowing a longer period of time between these two steps will provide the initiative proponents more time to negotiate with the Legislature or other entities and perhaps come to an agreement or settlement.

   In addition, increasing the time period will also provide the proponents with the ability to withdraw the initiative if an agreement or settlement is reached. Current law permits the proponents of a statewide or local initiative or referendum measure to withdraw the measure at any time before filing the petition with the appropriate elections official. This bill extends that period of time and permits the proponents of a statewide initiative or referendum to withdraw the measure after filing the petition with the appropriate elections official at any time before the SOS certifies that the measure has qualified for the ballot.

   It is unclear, however, whether this bill could be interpreted to be in conflict with the California Constitution. Under current law, the Governor is permitted to call a statewide special election for an initiative or referendum measure that is qualified for the ballot. As mentioned above, even if an initiative has been signed by the requisite number of qualified voters, the initiative, under the provisions of this bill, is not deemed to be qualified until after the SOS issues a certification of qualification on the 131st day prior to the identified election. It is unclear whether this new process negates the Governor's ability to call a statewide special election for an initiative measure that has received enough signatures to qualify for the ballot, but is not deemed to be qualified under the provisions of this bill. In order to provide legal assurance, the committee may wish to obtain a legal opinion from the Office of

Legislative Counsel to verify that this bill does not restrict the Governor's ability to call a statewide special election for an initiative measure.

7) Increased Timeframes: Current law requires a petition for a proposed initiative measure to be filed with the county elections official not later than 150 days from the official summary date. This bill extends the circulation time period to 180 days. While the addition of 30 days may be minor, it is unknown how this additional time will impact the current initiative process. Presumably adding extra days to the circulation period could increase the number of initiatives on the ballot.

   In addition, current law requires the SOS to make a copy of the state ballot pamphlet available for public examination not less than 20 days before the SOS submits the ballot pamphlet to the State Printer. This bill extends the public display period to 25 days.

   While both of these time changes may seem minor, in fact they could have a significant impact on the current initiative process. For example, there are many tasks that must be completed and important deadlines that must be met before the final version of the ballot pamphlet goes on public display. Conversely, there are tasks and many statutory deadlines that must be met after the public display period. For instance, if there are any legal challenges to the contents of the SOS's ballot pamphlet or AG's ballot labels and ballot titles and summaries, these challenges must be resolved in court. In addition, time needs to be allocated for the State Printer to print millions of state ballot pamphlets and for the final version of the state ballot pamphlet to be translated into nine foreign languages as required by law. Aside from those tasks, there are other statutory deadlines that must be met. For example, current law requires county elections official to finish sending military and overseas ballots 45 days before election day. Consequently, the lengthening of any statutory requirement could reduce the time available for the SOS to prepare the statewide ballot pamphlet, and may reduce the time available to county elections officials to prepare, print, and mail sample ballots, and print the official ballots for their voters.

8) Related Legislation: SB 844 (Pavley), which is also being heard in this committee today, contains similar provisions to portions of this bill. SB 844 requires the SOS, among other provisions, to create an Internet Web site, as specified, and consolidate information about each ballot measure in a manner that is easy for voters to access and understand on any computer system platform. Specifically, SB 844 requires the web site to include, among other information, a summary of each ballot measure, a current list of the top 10 contributors supporting or opposing a ballot measure, as specified, a list of each committee primarily formed to support or oppose a ballot measure, as specified, and for committees primarily formed to support or oppose a state ballot measure that raise $1,000,000 or more for an election, a list of the committee's top 10 contributors as provided by the FPPC, as specified.

9) Previous Legislation: SB 27 (Correa), Chapter 16, Statues of 2014, requires a primarily formed committee formed to support or oppose a state ballot measure or state candidate, and that raises $1,000,000 or more for an election, to maintain an accurate list of their top 10 contributors and to disclose those lists on the FPPC's Internet Web site, as specified. Additionally, SB 27 requires the FPPC to compile, maintain, and display on its Internet Web site a current list of the top contributors supporting and opposing each state ballot measure, as specified, among other provisions.

AB 2524 (Evans) of 2010, which was held on the Senate Appropriations suspense file, would have required the AG to submit a copy of the text of a proposed initiative measure to the SOS for posting on the SOS's Internet Web site for 30 days to facilitate public comment prior to the AG drafting the ballot title and summary for the proposed measure.

AB 1245 (Laird) of 2003, which was vetoed by Governor Gray Davis, would have required a 30 day public comment period prior to the AG drafting the ballot title and summary. In his veto message, Governor Davis stated that, "I am concerned that an initiative could receive either a negative or positive comment while displayed on the SOS web site; the proponents may then revise the initiative, but is not required to repost it. Consequently, the public may see one version of the initiative prior to the election and an entirely different initiative during the election."

SB 1715 (Margett) of 2006, which failed passage in the Senate Elections & Constitutional Amendments Committee, would have extended the signature gathering period from 150 days to 365 days.

10) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the Political Reform Act (PRA). Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the proposition and require a two-thirds vote of each house of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause (sponsor)
AARP California
American Association of University Women
California Chamber of Commerce
California School Employees Association
Disability Rights California
Sierra Club California

Opposition

California Teachers Association

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

EXHIBIT E

California
COMMON CAUSE
Holding Power Accountable

www.commoncause.org

March 14, 2014

The Honorable Darrell Steinberg
California State Senate
State Capitol Room
Sacramento, CA 95814

RE: SB 1253 (Steinberg) Ballot Measure Transparency Act

Dear Senate President pro Tem Steinberg,

On behalf of California Common Cause, I wanted to write to thank you and your staff for introducing **SB 1253, the Ballot Measure Transparency Act.** California Common Cause sponsors this piece of legislation because it will lead to clearer language, simpler ballots and more information for California voters.

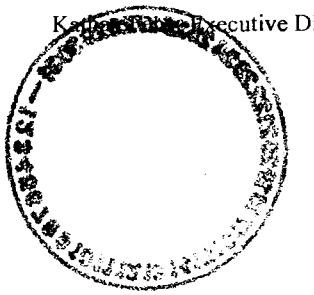
Californians agree that the initiative process needs to be improved; we all want clarity, transparency and fairness. According to a recent PPIC survey, 83% of Californians agree that initiative wording is too complicated and confusing. 84% of us favor increasing public disclosure of funding sources for both signature gathering and initiative campaigns. Almost as many (77%) support a review process to help avoid legal problems and drafting errors.

The Ballot Measure Transparency Act speaks to the concerns of California voters who want reliable and understandable sources of information that clearly describe the issues and proposed solutions. California Common Cause supports Senate Bill 1253 because it would give voters more accessible information about who is behind each initiative, ensure Voter Guides are easily understood, and allow legal flaws to be corrected in an initiative before it appears on the ballot. Ultimately these reforms are critical in order to make the ballot measure process more clear, transparency, and fair.

California Common Cause joins a broad coalition of sponsors that includes the League of Women Voters of California, California NAACP, Think Long Committee for California, California Church IMPACT, and California Forward. We thank you for your leadership on this important issue and look forward to partnering with your office to bring greater transparency to the initiative process.

Sincerely,

[redacted] Executive Director, California Common Cause



PROOF OF SERVICE

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

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

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

Appendix [Vol. I of II]
to Emergency Petition for Writ of Mandate
and Request for Immediate Stay and/or
Other Appropriate Relief;
Memorandum of Points and Authorities

on the following party(ies) in said action:

Thomas W. Hiltachk
Brian T. Hildreth
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
Phone: (916) 442-7757
Email: tomh@bmhlaw.com
Email: bhildreth@bmhlaw.com

Attorneys for Petitioners California District Attorneys Association and Anne Marie Schubert

Paul E. Stein
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Phone: (415) 703-5500
Email: paul.stein@doj.ca.gov

Attorneys for Respondents Attorney General of the State of California and Kamala Harris

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

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

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

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

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

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

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

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

Nina Leathley

Nina Leathley

(00268659-2)