No. S247278

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re Kenneth Humphrey,

on Habeas Corpus.

Request for Judicial Notice in Support of Proposed Brief of *Amici Curiae* ACLU of Northern California, ACLU of Southern California, ACLU of San Diego and Imperial Counties and California law professors

After Decision by the Court of Appeal
First Appellate District, Division 2, Case No. A152056

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
Micaela Davis (SBN 282195)*
39 Drumm Street
San Francisco, CA 94111
Phone: (415) 621-2493
Email: mdavis@aclunc.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SAN DIEGO & IMPERIAL COUNTIES, INC.
David Loy (SBN 229235)
2750 5th Avenue #300
San Diego, CA 92101
Phone: (619) 232-2121
Email: davidloy@aclusandiego.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA, INC.
Peter Eliasberg (SBN 189110)
1313 West 8th Street
Los Angeles, CA 90017
Phone: (213) 977-9500
Email: peliasberg@aclusocal.org

REMCHO, JOHANSEN & PURCELL, LLP
Robin B. Johansen (SBN 79084)
James C. Harrison (SBN 161958)
1901 Harrison Street, Suite 1550
Oakland, CA 94612
Phone: 510-346-6200
Email: rj@rjp.com

Attorneys for *Amici Curiae*

AMICI'S MOTION FOR REQUEST FOR JUDICIAL NOTICE

Pursuant to Rule 8.252 of the California Rules of Court and sections 452, 453 and 459 of the California Evidence Code, the American Civil Liberties Union ("ACLU") of Northern California, ACLU of Southern California, ACLU of San Diego and Imperial Counties and California law professors, academics and clinical instructors ("*Amici*") respectfully request that the Court take judicial notice of excerpts of proposed ballot initiative text and various newspapers articles in support of *Amici's* Proposed Brief In Support of Respondent Kenneth Humphrey, dated October 9, 2018 ("Proposed Brief").

MATTERS TO BE NOTICED

Amici request that the Court take judicial notice of the following matters.

A. Alternative Versions of Proposition 9 of 2008 - "Marsy's Law"

1. Exhibit A: Excerpted pages 1 to 7 of the text of initiative 07-0096, "The Victim's Rights and Protection Act: Marsy's Law – Version 3," proposed for the November 8, 2008 election, and the proponent's cover letter to the California Attorney General's Office ("Attorney General") enclosing the initiative's text, dated December 5, 2007.
2. Exhibit B: Excerpted pages 1 to 7 of the text of initiative 07-0095, "The Victim's Rights and Protection Act: Marsy's Law – Version 2," proposed for the November 8, 2008 election and the proponent's

cover letter to the Attorney General enclosing the initiative's text, dated December 7, 2007.

3. Exhibit C: Excerpted pages 1 to 7 of the text of initiative 07-0088 Amdt. #2S, "Victims Rights and Protection Act: Marsy's Law," proposed for the November 8, 2008 election and the proponent's cover letter to the Attorney General enclosing the initiative's text, dated December 5, 2007.
4. Exhibit D: Excerpted pages 1 to 7 of the text of initiative 07-0097 Amdt. #3S, "The Victims Rights and Protection Act of 2008: Implementation and Enforcement Tools for Victims, Prosecutors, and Judges," proposed for the November 8, 2008 election and the proponent's cover letter to the Attorney General enclosing the initiative's text, dated December 24, 2007.

B. Notices of Failure for Alternative Versions of Proposition 9

1. Exhibit E: The notice of failure for the proposed initiative numbered 07-0088 by the Attorney General's office, sent July 23, 2008 by the California Secretary of State, to all county clerks and registrars of voters and the initiative proponent, notifying the parties that the initiative had failed to qualify for the ballot.
2. Exhibit F: The notice of failure for the proposed initiative numbered 07-0095 by the Attorney General's office, sent July 23, 2008 by the California Secretary of State, to all county clerks and registrars of

voters and the initiative proponent, notifying the parties that the initiative had failed to qualify for the ballot.

3. Exhibit G: The notice of failure for the proposed initiative numbered 07-0096 by the Attorney General's office, sent July 23, 2008 by the California Secretary of State, to all county clerks and registrars of voters and the initiative proponent, notifying the parties that the initiative had failed to qualify for the ballot.
4. Exhibit H: The notice of failure for the proposed initiative numbered 07-0097 by the Attorney General's office, sent July 23, 2008 by the California Secretary of State, to all county clerks and registrars of voters and the initiative proponent, notifying the parties that the initiative had failed to qualify for the ballot.

The documents enclosed in exhibits A to H were provided to the ACLU Center for Advocacy and Policy by the Attorney General's office, as set forth and described in the Declaration of Natasha Minsker, dated October 5, 2018 ("Minsker Declaration"), attached as Exhibit T.

C. Newspaper articles about Propositions 8 and 9

1. Exhibit I: *No on Proposition 9,* L.A. TIMES (Sept. 26, 2008), http://www.latimes.com/opinion/editorials/la-ed-9prop26-2008sep26-story.html.
2. Exhibit J: *Editorial: Proposition 9 Would Increase Prison Costs; Vote No*, THE MERCURY NEWS (Oct. 14, 2008),

https://www.mercurynews.com/2008/10/14/editorial-proposition-9-would-increase-prison-costs-vote-no/.

3. Exhibit K: *Props. 6 and 9 are Budget Busters,* SF GATE (Oct. 9, 2008), https://www.sfgate.com/opinion/article/Props-6-and-9-are-budget-busters-3266152.php.
4. Exhibit L: *Fiscal Disaster in California,* THE N.Y. TIMES (Oct. 9, 2008), https://www.nytimes.com/2008/10/10/opinion/10fri2.html.
5. Exhibit M: Art Campos, *Victims' Rights Effort Advances,* SACRAMENTO BEE (April 29, 2008).
6. Exhibit N: Patrick McGreevy, *Initiatives Tug at Voters' Convictions,* L.A. TIMES (June 29, 2008), http://articles.latimes.com/2008/jun/29/local/me-ballot29/2.
7. Exhibit O: *Crime Victims Advocates and Law Enforcement Leaders Unite in Support of Prop. 9 – Marsy's Law: The Crime Victims' Bill of Rights Act of 2008,* BUSINESS WIRE (Sept. 23, 2008), https://www.businesswire.com/news/home/20080923006578/en/.
8. Exhibit P: John Kendall, *Prop. 8 – Serving Justice or Assaulting It?* L.A. TIMES (May 3, 1982).
9. Exhibit Q: Sara Terry, *California's Proposition 8: Voter Rebellion Against Crime,* THE CHRISTIAN SCIENCE MONITOR

(June 7, 1982).

10. Exhibit R: Aric Press & Joe Contreras, *A 'Victims' Bill of Rights,'* NEWSWEEK (June 14, 1982).

11. Exhibit S: Philip Hager, *If Passed, Prop. 8 Likely to End Up in the Courts,* L.A. TIMES (May 24, 1982).

ARGUMENT

The Court should take judicial notice of the above matters, because they are relevant to the issues in front of the Court and are properly subject to judicial notice under the California Evidence Code.

A. Alternative Versions of Proposition 9

The proposed ballot measures submitted to the Attorney General as alternative versions of Proposition 9, attached as exhibits A through D, are relevant to this matter, because they contrast with the measure that was actually submitted to the voters as Proposition 9, and show that the proponents of Proposition 9 knew how to draft a measure that would restore the inoperative provisions of Proposition 8 if that is what they intended to do. *See* Proposed Brief at 36-39. This evidence supports *Amici's* argument that the Proposition 9 voters did not intend to give effect to all of the language contained in the proposed amendments to article I, section 28 of the California Constitution, as set forth in the text of Proposition 9. *Id.*; *see Senate of State of California v. Jones*, 21 Cal. 4th 1142, 1149, n. 2; 1151, n. 5 (1999) (taking note of the alternative measures proponents had submitted

in making a determination that the initiative violated the single-subject rule).

The Attorney General's office is the state agency responsible for receiving the text of proposed ballot initiatives in order to create a title and summary for the initiative. *See* California Attorney General, Ballot Initiative website, https://oag.ca.gov/initiatives (explaining that in order to propose an initiative for the ballot the proponent must submit the initiative draft to the Attorney General for title and summary); *see also Rialto Citizens for Responsible Growth v. City of Rialto*, 208 Cal. App. 4th 899, 933 (2012) (taking judicial notice on its own motion "that the SCAQMD is the agency responsible for attaining state and federal clean air standards [for certain parts of California]"; citing authority under Evidence Code section 452(h)).

The proposed alternative versions of Proposition 9 were received by the Attorney General's office—an executive department of the state of California—from the initiative proponent, were file-stamped received by the Attorney General's office and were subsequently furnished by the Attorney General's office to the ACLU upon request. *See* Exs. A-D (proposed text and accompanying file-stamped cover letters); Ex. T (Minsker Declaration). The documents are thus subject to judicial notice under section 452(c) of the Evidence Code, which permits the Court to take judicial notice of the records of "[o]fficial acts of the legislative, executive,

and judicial departments of the United States and of any state of the United States." Cal. Evid. Code § 452(c); *People v. Kim*, 45 Cal. 4th 1078, 1106 (2009) (taking judicial notice of an information bulletin from the California Attorney General to state criminal justice agencies); *Cosa Mesa City Employees Ass'n v. City of Costa Mesa*, 209 Cal. App. 4th 298, 315 n.8 (2012) (taking judicial notice of an interdepartmental memo written by the deputy Attorney General to the Governor); *People v. Crusilla*, 77 Cal. App. 4th 141, 147 (1999) (taking judicial notice of Attorney General publication relating to state and federal jurisdiction over border crossing). Courts also routinely take judicial notice of analogous legislative history material, under section 452(c), including prior bill versions that were not subsequently enacted. *See, e.g., Jones v. Lodge at Torrey Pines Partnership*, 42 Cal. 4th 1158, 1169-70 (2008) (taking judicial notice of legislative history including prior versions of a bill); *Rea v. Blue Shield of California*, 226 Cal. App. 4th 1209, 1223-24 (2014) (taking judicial notice of competing bill that was considered but not approved by the Legislature).

Finally, *Amici* notes that if the text of the alternative initiative versions had been submitted in 2010 or after, copies of the text would be available on the section of the Attorney General's website and would also be properly subject to judicial notice under section 452(c) as material on a government website. *See* California Attorney General Website, Initiatives – Inactive Measures, https://oag.ca.gov/initiatives/inactive-measures

(showing text of withdrawn or failed proposals from 2010 to the present); *People v. Seumanu*, 61 Cal. 4th 1293, 1372-73 (2015) (taking judicial notice of information available on website maintained by the California Attorney General).

B. Notices of Failure for Alternative Versions of Proposition 9

The notices of failure for the alternative versions of Proposition 9, attached as exhibits E through H, are relevant to the issues in front of the Court, because they show that these proposals did not qualify and go to the voters. The notices of failure are subject to judicial notice because they are records of the California Secretary of State, an executive department of the state of California. *See* Cal. Evid. Code § 452(c); *El Escorial Owners' Ass'n v. DLC Plastering, Inc.*, 154 Cal. App. 4th 1337, 1367 (2007) (taking judicial notice of California Secretary of State document certifying suspension of party's corporate status); *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado*, 200 Cal. App. 4th 1470, 1478 n.6 (2011) (taking judicial notice of certificate of status and letter acknowledging receipt of statement of information issued by Secretary of State).

C. Newspaper articles about Propositions 8 and 9

The newspaper articles about 9, attached as exhibits I through O, are relevant to the issues in front of the Court, because they show that, contrary to Petitioner's argument, voters' confusion from the ballot materials was

not mitigated by news coverage of Proposition 9, since the news coverage of Proposition 9 did not inform voters that the proposition would repeal the right to pretrial release and replace it with an expansive detention authority. *See* Proposed Brief at 33-35. The newspaper articles about Proposition 8, attached as exhibits P through S, are relevant because they show that, in contrast to Proposition 9, the coverage about Proposition 8 clearly identified that initiative's expansion of pretrial detention authority. *See id.*

The newspaper articles are properly subject to judicial notice under Evidence Code § 452(h), which permits the Court to take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Cal. Evid. Code § 452(h). The publication date and content of the articles in Exhibits I through S can be verified by visiting the respective publishers' websites or by searching other legal or academic search engines. *Amici* submit these articles not for the truth of the matters asserted therein, but to show the propositions and facts that are or are not contained therein. The Court should thus take judicial notice of the articles. *See, e.g., Seeling v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 807, n. 5 (2002) (taking judicial notice of news articles about a television show; noting that "[w]ithout assuming the truth of the assertions contained in the news articles, the fact that news articles discussing topics provoked by the [television show] were published is not

reasonably subject to dispute."); *StorMedia v. Sup. Ct.*, 20 Cal. 4th 449, 456 n. 9 (1999) (taking judicial notice of press release and articles).

* * *

The issue to which the above matters are relevant—the question of which California Constitutional provision governs pretrial detention—was not in front of the trial court. Although none of the above matters was presented to the trial court, a "reviewing court may take judicial notice of any matter specified in Section 452." Cal. Evid. Code § 459.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the Court take judicial notice of the alterative initiative cover letters and text, the prior initiatives' notices of failure and the newspaper articles about Propositions 8 and 9.

Respectfully submitted,

Dated: October 9, 2018

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.

By: _____
MICAELA DAVIS

Attorneys for *Amici Curiae* ACLU of Northern California, ACLU of Southern California, ACLU of San Diego and Imperial Counties and California law professors, academics and clinical instructors

[PROPOSED] ORDER

IT IS HEREBY ORDERED that:

The request by *Amici Curiae* ACLU of Northern California, ACLU of Southern California, ACLU of San Diego and Imperial Counties and California law professors, academics and clinical instructors ("*Amici*"), for judicial notice of the alternative versions of Proposition 9 that were submitted to the Attorney General, attached as exhibits A through D of the Request for Judicial Notice, is GRANTED;

The request by *Amici* for judicial notice of the notices of failure of the alternatives versions of Proposition 9 that were submitted to the Attorney General, attached as exhibits E through H of the Request for Judicial Notice, is GRANTED; and

The request by *Amici* for judicial notice of newspaper articles about Propositions 8 and 9, attached as exhibits I through S of the Request for Judicial Notice, is GRANTED.

DATED: _____

_____

PRESIDING JUSTICE

EXHIBIT A

(Excerpts of Proposed Initiative #07-0096)

07-0096

Krystal Paris
Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, California 95814

RE: Request for Title and Summary for Proposed Initiative
"The Victim's Rights and Protection Act: Marsy's Law –Version 3",

Dear Initiative Coordinator,

Please find enclosed a copy of "The Victim's Rights and Protection Act: Marsy's Law –Version 3", a proposed statewide ballot initiative for the November 8, 2008 election. It is hereby requested that the Office of the Attorney General prepare a title and summary of the ballot initiative measure as provided by law.

Included with the copy of the initiative measure and this cover letter, are the required affidavits and a check for amount of the required filing fee of $200.00.

Contact can be made regarding this initiative by calling
addaemail@aol.com.

Sincerely,

Steven J. Ipsen

VICTIMS RIGHTS AND PROTECTION ACT:
MARSY'S LAW – VERSION 3
DECEMBER 7, 2007

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose additions and amendments to the California Constitution and to the California Evidence Code, the California Government Code, and the California Penal Code, relating to the rights of victims of crime, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory additions and amendments (full title and text of the measure) read as follows:

SECTION 1. TITLE

This Measure shall be known and may be cited as the "Victims Rights and Protection Act: Marsy's Law."

SECTION 2. FINDINGS AND DECLARATIONS

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

1. The rights of victims of crime are simply stated. They include the right to notice and to be heard during critical stages of the criminal justice system proceedings; the right to receive restitution from the criminal wrongdoer; the right to the enactment of statutes that promote and encourage the recruitment and retention of highly trained, career criminal prosecutors who have high ethical standards, who are free from conflicts of interest, and who are sensitive to the needs and rights of crime victims; the right to be and feel reasonably safe throughout all of the criminal proceedings against the wrongdoer; the right to expect the individually determined sentence of a judge to be honored and fully carried out; the right to expect the Legislature to properly fund the criminal justice system, so that the rights of crime victims stated in this Findings and Declarations and that justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer that is an effective deterrent to future criminal wrongdoing.

2. The process by which criminal wrongdoers are held criminally accountable for their crimes has been given to the exclusive control of the government. The people of this state have surrendered any right or legal authority to take individual action to impose criminal punishment upon criminal wrongdoers, regardless of the extent of personal pain and suffering inflicted upon them by these criminal perpetrators.

3. It is, therefore, an important responsibility of government to ensure that law enforcement officials and prosecutors are enabled to employ an efficient justice system to investigate crimes committed against the people of this State, exercise their discretion to charge criminal wrongdoers with violations of the State's penal laws, detain criminal wrongdoers in order to ensure their attendance in criminal proceedings against them, protect crime victims and their families during the criminal justice process, fairly and speedily bring criminal wrongdoers to trial, impose just sentences on those wrongdoers who are convicted of the charges against them, and ensure that every individually imposed judicial sentence is fully and constitutionally carried out as ordered by the court.

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

5. The People of the State of California find that the "broad reform" of the criminal justice system intended to grant these basic rights mandated in the *Victims' Bill of Rights* initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the People. Victims of crime continue to be denied their right to swift and just punishment of their criminal wrongdoers, and to be denied their right to a criminal justice system that performs as it should.

6. The Criminal Justice System of California fails the victims and their families even in cases in which the rights of victims and the accused are the most critical - capital murder cases in which the law allows the imposition of a sentence of death upon the criminal wrongdoer.

7. "Night Stalker" Richard Ramirez, convicted murderer of 13 people, and 666 other "worst of the worst" murderers languish for decades on California's death row, draining almost $60 million each year from California's taxpayers just to house and feed them while an overwhelmed system of death penalty appeals grinds slowly to a halt, denying everyone affected by the devastation of murder, condemned inmates and the families of their victims, a timely resolution that assures that death verdicts and punishments are justly applied.

8. California's arcane death appeal process established in 1849, which requires automatic appeal to only one court, the California Supreme Court, composed of just seven jurists, has created a backlog of death cases that causes death penalty appeals to be unresolved for decades. Capital murderers sentenced to death go unrepresented by an appellate attorney for an average of more than three years while they sit on death row.

9. United States Circuit Court Judge Arthur Alarcon declared in 2007 that we "must bring an end to the appalling delay in reviewing California death penalty convictions and reduce wasteful expenditure of millions of dollars in housing death row inmates for decades before determining whether their conviction or sentence should be vacated or affirmed."

10. In a recent Associated Press interview, California Supreme Court Chief Justice Ronald George stated that California's 20-30 year death penalty process has become "dysfunctional."

11. Even if the California Supreme Court were able to resolve the appeals of just one capital murderer every week, it would take that Court 12 years to resolve the backlog of appeals of capital murderers already on death row, and that backlog increases by more than 25 new condemned murderers each year. This is broken criminal justice that demands repair.

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

13. Each year hundreds of convicted murderers sentenced to serve life in prison, seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of their murdered victims and waste millions of dollars each year. Only in California are convicted murderers given appointed attorneys paid by the tax dollars of California's citizens, and they are often given parole hearings every year. The families of their murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again freed to murder again.

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

15. Parole Board commissioners, whose appointments must be confirmed by the State Legislature, have reported that they have been pressured by state legislators to parole more murderers in order to reduce the population of California's overcrowded prisons

16. Prisoner rights groups push for laws to give state prison inmates privileges and comforts, such as access to pornography, violent "R" and "NC-17" movies, and overnight sex visits, seeking to reduce the punitive and deterrent value of punishment. Catering to these demands will bankrupt prison budgets and cause federal courts to order the release from prison of tens of thousands of convicted felons due to overcrowding in our prisons.

17. Like most victims of murder, Marsy was neither rich nor famous when she was murdered in 1983 at the age of 21 by a former boyfriend who lured her from her parents' home by threatening to kill himself. Instead he used a shotgun to brutally end her life when she entered his home in an effort to stop him from killing himself. Following her murderer's arrest, Marsy's mother was shocked to meet him at a local supermarket, learning that he had been released on bail without any notice to Marsy's family and without any opportunity for her family to state their opposition to his release.

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

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

20. The enactments and amendments made by the "Victims Rights Act of 2008 – Marsy's Law" constitute rights of victims of crime and their families or are necessary to effectuate those rights within the meaning of Section 28 of Article I of the California Constitution.

SECTION 3. STATEMENT OF PURPOSES AND INTENT

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

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

2. Provide the California Supreme Court greater authority, discretion, and resources to use more than one hundred California Court of Appeal justices to hear and resolve death penalty appeals.

3. Send convicted county jail inmates to do environmental cleanup, fire abatement, and other such public works projects while they are incarcerated to make effective the punitive, deterrent, and rehabilitative experiences of productive hard work, in order to reduce the danger that crime victims and their families will be again victimized by these inmates.

4. Establish guidelines for opening emergency jails and other such facilities to stop the early release of large numbers of convicted criminals from county jails caused by overcrowding of those jails.

5. Notify victims of all criminal proceedings and establish a specific and enforceable statutory right to notice during the criminal prosecutions of their wrongdoers.

6. Provide victims with a right to be heard at the critical stages of a criminal case, a right to a reasonable degree of safety and respect throughout the criminal justice process, a meaningful right to collect restitution from their criminal wrongdoers, and most importantly, a right to see their wrongdoers fairly and expeditiously punished as payment for the criminal wrongs they have committed and as a deterrent to their committing further crimes.

7. Impose on criminal prosecutors the highest standards of regular training and education in prosecutorial ethics and victims rights, to eliminate threats of bias and corruption arising from conflicts of interest, and to prohibit the exploitation of victims of crime for political or other purposes.

8. Provide assurances to victims that the criminal prosecutors who prosecute crimes on behalf of the People of the State of California and who are the primary sources of support and guidance to, and the sole courtroom voices of, victims of crime, are competent, ethical, non-conflicted, victim-sensitive, and respected career representatives of the People.

9. Ensure that the sentences and punishments individually imposed by judges on their criminal wrongdoers will be carried out as ordered, and not be undermined by political or economic pressures.

10. Secure justice for victims of crimes, by enforcing the Victims Bill of Rights passed by California's voters in 1982.

SECTION 4.

Section 12 of Article I of the California Constitution is repealed.

~~SEC. 12. A person shall be released on bail by sufficient sureties, except for:~~
~~(a) Capital crimes when the facts are evident or the presumption great;~~
~~(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or~~
~~(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.~~
~~Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.~~
~~A person may be released on his or her own recognizance in the court's discretion.~~

SECTION 5.

Section 28 of Article I of the California Constitution is amended to read:

SEC. 28. (a) *(1)* The People of the State of California find and declare that *criminal activity has a serious impact on the citizens of California. The People further find and declare that the rights of victims in criminal prosecutions is a subject of grave statewide concern.*

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

(3) The People further find and declare that ~~The~~ *the* rights of victims ~~pervade~~ *of crime must be paramount at every stage of* the criminal justice system~~,~~. ~~encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more~~ *These rights encompass the* basic expectation that persons who commit ~~felonious~~ *criminal* acts causing *physical, emotional, and economic* injury to *the person and property of others* ~~innocent victims~~ will be appropriately *and thoroughly investigated, appropriately* detained in custody, *and expeditiously charged, brought before the courts,* tried ~~by the courts~~, *sentenced* and sufficiently punished, so that the public safety is protected and encouraged, *and that the Legislature and other governing bodies that are responsible for ensuring that public safety budgets provide sufficient resources to house in any state prison, county jail, or other state or local correctional or rehabilitation facility, all persons sentenced to those institutions or otherwise judicially compelled to abide by limitations on their freedoms as punishment for criminal activity* ~~as a goal of highest importance~~.

(4) The People further find and declare that the right of victims of crime to expect that persons convicted of committing criminal acts are sufficiently punished in the manner and to the extent sentenced by the courts of the State of California, encompasses the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights, privileges, and comforts to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility as a punishment or correction for the commission of a crime. No statute enacted on or after January 1, 2008, that requires or authorizes that persons incarcerated in a penal facility in this State as a punishment for the commission of a criminal act, be granted rights, privileges, or comforts that are not required by the Constitution of the United States to be provided to such persons shall have any force and effect.

(5) The People further find and declare that victims of crime have the right to be informed about and to appropriately participate in judicial proceedings against their wrongdoers, the right to receive restitution from their wrongdoers for financial losses they have suffered as a result of the wrongdoers' criminal acts, and the right to be informed about and to participate in proceedings involving the punishment and incarceration of their wrongdoers.

(6) The People further find and declare that except for legislative acts that expand the power of the governor to grant a reprieve, pardon, or commutation of a sentence on an individual basis as provided in subdivision (a) of Section 8 of Article V, no final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any subsequent act of the Legislature or any initiative passed by the electorate

~~(6)~~ *(7)* ~~Such~~ *Finally, the People find and declare that the right to* public safety extends to public primary, elementary, junior high, and senior high school, *community college, college, and university* campuses, where students and staff have the right to be safe and secure in their persons.

(7) To accomplish ~~these~~*the* goals *that criminal behavior be deterred and the disruption of the lives of California's citizens caused by that criminal behavior be minimized, and that the public safety be protected and encouraged, it is necessary that the laws of California relating to the criminal justice process be regularly updated and amended in order to protect the legitimate rights of victims of crime.* ~~, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.~~

(b) *(1) In order to preserve and protect a crime victim's rights to justice and due process of law, every crime victim, regardless of race, sex, age, religion, or economic status, shall be entitled to the following rights:*

(A) To be treated with fairness and respect for his or her dignity and privacy, to be free from intimidation, harassment, exploitation, abuse, and danger throughout the criminal and juvenile justice process, and to be free from unnecessary and unwanted courthouse encounters with a criminal defendant and his or her family and associates.

(B) To receive from the courts and from law enforcement agencies reasonably adequate protection from the accused and persons acting on behalf of the accused from harm and threats of harm arising from cooperation with prosecution efforts throughout the criminal or juvenile justice process.

(C) To have the safety of the victim and the family of the victim considered as an element in fixing the amount of bail and release conditions for the accused.

(D) To confidentiality and privacy of personal information regarding the crime victim and the family of the crime victim, to include home address, telephone number, school, and place of employment during the criminal process, unless the court finds that release of that information is compelled by the due process rights of the accused.

(E) To the enactment of statutes that promote and encourage the recruitment and retention of highly qualified attorneys to become career criminal prosecutors, that mandate and facilitate high levels of training of these prosecutors, that promote high standards of prosecutorial ethics and sensitivity to the needs and rights of crime victims, and that ensure that the prosecutor is free from actual or apparent conflicts of interest in representing the People of the State of California in handling the prosecution of the accused.

(F) To be informed about and given an opportunity to provide input into the decisions of the prosecuting attorney regarding the filing of charges against the accused.

(G) To reasonably confer with the prosecution, upon request, before the entry of a disposition of criminal or juvenile charges, and to be informed, upon request, of any pretrial disposition of those charges.

(H) To be informed of and to be present at any criminal proceedings at which the defendant, the prosecuting attorney, and the general public are entitled to be present.

(I) To be informed of his or her right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the crime victim consents.

(J) To be informed of his or her right to be represented by retained counsel as to any issue during the criminal prosecution, juvenile adjudication, or parole phases of the case.

(K) To provide pertinent information to a probation department official conducting a pre-sentencing investigation concerning the impact of the offense on the victim and the family of the victim prior to the sentencing of the defendant.

(L) To receive a copy of the pre-sentence report when available to the defendant, except for those portions made confidential by law.

(M) To be informed about and to be allowed to submit a written, electronically recorded, and oral statement at any proceeding involving a post-arrest release decision, plea, sentencing, or post-conviction release of the defendant, or any other proceeding in which a right or interest of the crime victim may be asserted.

(N) To a reasonable disposition that sufficiently punishes the wrongdoer, deters future criminal conduct, and provides for a speedy and prompt final conclusion of the case.

(O) To be informed, or to have easy access to information, when the accused or convicted person is arrested, has a

scheduled hearing relating to release on bail or own recognizance, is sentenced, is incarcerated, has escaped from custody, is scheduled for a parole hearing, is scheduled for release, or is actually released from custody.

(P) To receive prompt and full restitution from the adult or juvenile offender for any loss or injury suffered by the victim or the family of the victim.

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

(R) To an independent Board of Adult Parole Hearings whose members are free from political and economic influences and pressures in determining whether to grant parole to a state prisoner serving a life term of imprisonment, and to an independent Board of Juvenile Parole whose members are free from political and economic influences and pressures in determining whether to grant parole to a ward serving a term in a state juvenile justice facility.

(S) To be informed, if requested, of parole procedures, to be notified, if requested, of parole proceedings concerning the convicted wrongdoer, to participate in the parole process, to provide to the Board of Adult Parole Hearings information to be considered prior to the parole of the offender, and to be notified, if requested, of the parole or other release of the offender.

(T) To be informed of the rights of crime victims enumerated in this Constitution and in the statutes of the State of California.

(2) A crime victim, a guardian or legal representative of a crime victim, or the prosecuting attorney with the consent of the crime victim, may enforce the rights of crime victims enumerated in this constitution and other rights provided by law in any court as a matter of right. A victim's exercise of any right granted by this constitution or statutes of the State shall not be used as grounds for dismissing any criminal or juvenile proceeding or for setting aside any conviction or sentence.

(3) Except as specifically provided by statute enacted by the people or by the Legislature, nothing in this Section shall be deemed to create a civil cause of action for compensation or damages against any public employee or official or any officer of the court, any public agency, the State of California or any political subdivision thereof, or any other agency or person responsible for the enforcement of rights and provision of services described in this section.

(4) The granting of these rights to victims of crime shall not be construed to deny or disparage other rights possessed by crime victims.

(5) As used in this Section a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act against him or her. The term "victim" also includes the person's spouse, domestic partner, parent, child, sibling, or other lawful representative of a crime victim who is deceased, who is a minor, or who is incompetent, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or in the case of a minor victim, a person who the court finds will not act in the best interests of the minor

(c) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to *seek and secure* restitution, *supported by specific provisions of California law,* from the persons convicted of *or adjudicated to have committed* the crimes *or offenses* for losses they suffer. Restitution shall be ordered from the convicted *or adjudicated* ~~persons~~ *wrongdoers* in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. ~~The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.~~

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

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

~~(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.~~

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

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

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

(f) Public Safety Bail. (1) A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the victim, the family of the victim, and the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Bail shall not be reduced as a means of addressing jail overcrowding. Public safety shall be the primary consideration.

(2) A person may be released on his or her own recognizance in the discretion of the court, subject to the same factors considered in setting bail. However, no person shall be released on his or her own recognizance if any one of the following circumstances are true:

(A) The defendant is charged with the commission of a violent felony as described in subdivision (c) of Section 667.5;

(B) The defendant is charged with the commission of a serious felony as described in subdivision (c) of Section 1192.7;

(C) The defendant is charged with a felony alleged to have been committed while the defendant was on parole or probation; or

(D) The defendant is charged with a felony alleged to have been committed while the defendant was released from custody on bail or on own recognizance on another offense.

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

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

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

~~(g)~~ *(h)* ~~As~~ *While all felonies are serious crimes, as* used in this article, the term "serious felony" is *limited to* any crime *described* ~~defined~~ in *subdivision (c) of Section 1192.7* ~~Penal Code, Section 1192.7(c)~~.

SECTION 6.

Section 30 of Article I of the California Constitution is amended to read:

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

(d) In order to provide for fair and speedy resolution of postconviction petitions for relief, discovery in postconviction habeas corpus proceedings shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

SECTION 7.

Section 12.1 is added to Article 2 of the California Constitution to read:

Sec. 12.1. (a) Except as provided in subdivision (b), no statute proposed to the electors by the Legislature or by initiative, and no statute enacted by the Legislature that redefines, to the benefit of defendants, conduct subject to criminal sanctions, or that reduces or abolishes the punishment for a criminal act, or that creates a sentencing commission or other entity by any other name for the purpose of effecting reductions in sentences, shall have any effect upon any final judgment of conviction which has already imposed that punishment. No final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any such subsequent statute enacted by the Legislature.

EXHIBIT B

(Excerpts of Proposed Initiative #07-0095)

December 7, 2008

07-0095

Krystal Paris
Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, California 95814

RE: Request for Title and Summary for Proposed Initiative
"The Victim's Rights and Protection Act: Marsy's Law –Version 2",

Dear Initiative Coordinator,

Please find enclosed a copy of "The Victim's Rights and Protection Act: Marsy's Law –Version 2", a proposed statewide ballot initiative for the November 8, 2008 election. It is hereby requested that the Office of the Attorney General prepare a title and summary of the ballot initiative measure as provided by law.

Included with the copy of the initiative measure and this cover letter, are the required affidavits and a check for amount of the required filing fee of $200.00.

Contact can be made regarding this initiative by · at addaemail@aol.com.

Sincerely,

Steven J. Ipsen

December 7, 2008

VICTIMS RIGHTS AND PROTECTION ACT:
MARSY'S LAW – VERSION 2
DECEMBER 7, 2007

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose additions and amendments to the California Constitution and to the California Evidence Code, the California Government Code, and the California Penal Code, relating to the rights of victims of crime, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory additions and amendments (full title and text of the measure) read as follows:

SECTION 1. TITLE

This Measure shall be known and may be cited as the "Victims Rights and Protection Act: Marsy's Law."

SECTION 2. FINDINGS AND DECLARATIONS

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

1. The rights of victims of crime are simply stated. They include the right to notice and to be heard during critical stages of the criminal justice system proceedings; the right to receive restitution from the criminal wrongdoer; the right to the enactment of statutes that promote and encourage the recruitment and retention of highly trained, career criminal prosecutors who have high ethical standards, who are free from conflicts of interest, and who are sensitive to the needs and rights of crime victims; the right to be and feel reasonably safe throughout all of the criminal proceedings against the wrongdoer; the right to expect the individually determined sentence of a judge to be honored and fully carried out; the right to expect the Legislature to properly fund the criminal justice system, so that the rights of crime victims stated in this Findings and Declarations and that justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer that is an effective deterrent to future criminal wrongdoing.

2. The process by which criminal wrongdoers are held criminally accountable for their crimes has been given to the exclusive control of the government. The people of this state have surrendered any right or legal authority to take individual action to impose criminal punishment upon criminal wrongdoers, regardless of the extent of personal pain and suffering inflicted upon them by these criminal perpetrators.

3. It is, therefore, an important responsibility of government to ensure that law enforcement officials and prosecutors are enabled to employ an efficient justice system to investigate crimes committed against the people of this State, exercise their discretion to charge criminal wrongdoers with violations of the State's penal laws, detain criminal wrongdoers in order to ensure their attendance in criminal proceedings against them, protect crime victims and their families during the criminal justice process, fairly and speedily bring criminal wrongdoers to trial, impose just sentences on those wrongdoers who are convicted of the charges against them, and ensure that every individually imposed judicial sentence is fully and constitutionally carried out as ordered by the court.

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

5. The People of the State of California find that the "broad reform" of the criminal justice system intended to grant these basic rights mandated in the *Victims' Bill of Rights* initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the People. Victims of crime continue to be denied their right to swift and just punishment of their criminal wrongdoers, and to be denied their right to a criminal justice system that performs as it should.

6. The Criminal Justice System of California fails the victims and their families even in cases in which the rights of victims and the accused are the most critical - capital murder cases in which the law allows the imposition of a sentence of death upon the criminal wrongdoer.

7. "Night Stalker" Richard Ramirez, convicted murderer of 13 people, and 666 other "worst of the worst" murderers languish for decades on California's death row, draining almost $60 million each year from California's taxpayers just to house and feed them while an overwhelmed system of death penalty appeals grinds slowly to a halt, denying everyone affected by the devastation of murder, condemned inmates and the families of their victims, a timely resolution that assures that death verdicts and punishments are justly applied.

8. California's arcane death appeal process established in 1849, which requires automatic appeal to only one court, the California Supreme Court, composed of just seven jurists, has created a backlog of death cases that causes death penalty appeals to be unresolved for decades. Capital murderers sentenced to death go unrepresented by an appellate attorney for an average of more than three years while they sit on death row.

9. United States Circuit Court Judge Arthur Alarcon declared in 2007 that we "must bring an end to the appalling delay in reviewing California death penalty convictions and reduce wasteful expenditure of millions of dollars in housing death row inmates for decades before determining whether their conviction or sentence should be vacated or affirmed."

10. In a recent Associated Press interview, California Supreme Court Chief Justice Ronald George stated that California's 20-30 year death penalty process has become "dysfunctional."

11. Even if the California Supreme Court were able to resolve the appeals of just one capital murderer every week, it would take that Court 12 years to resolve the backlog of appeals of capital murderers already on death row, and that backlog increases by more than 25 new condemned murderers each year. This is broken criminal justice that demands repair.

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

13. Each year hundreds of convicted murderers sentenced to serve life in prison, seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of their murdered victims and waste millions of dollars each year. Only in California are convicted murderers given appointed attorneys paid by the tax dollars of California's citizens, and they are often given parole hearings every year. The families of their murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again freed to murder again.

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

15. Parole Board commissioners, whose appointments must be confirmed by the State Legislature, have reported that they have been pressured by state legislators to parole more murderers in order to reduce the population of California's overcrowded prisons

16. Prisoner rights groups push for laws to give state prison inmates privileges and comforts, such as access to pornography, violent "R" and "NC-17" movies, and overnight sex visits, seeking to reduce the punitive and deterrent value of punishment. Catering to these demands will bankrupt prison budgets and cause federal courts to order the release from prison of tens of thousands of convicted felons due to overcrowding in our prisons.

17. Like most victims of murder, Marsy was neither rich nor famous when she was murdered in 1983 at the age of 21 by a former boyfriend who lured her from her parents' home by threatening to kill himself. Instead he used a shotgun to brutally end her life when she entered his home in an effort to stop him from killing himself. Following her murderer's arrest, Marsy's mother was shocked to meet him at a local supermarket, learning that he had been released on bail without any notice to Marsy's family and without any opportunity for her family to state their opposition to his release.

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

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

20. The enactments and amendments made by the "Victims Rights Act of 2008 – Marsy's Law" constitute rights of victims of crime and their families or are necessary to effectuate those rights within the meaning of Section 28 of Article I of the California Constitution.

SECTION 3. STATEMENT OF PURPOSES AND INTENT

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

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

2. Provide the California Supreme Court greater authority, discretion, and resources to use more than one hundred California Court of Appeal justices to hear and resolve death penalty appeals.

3. Send convicted county jail inmates to do environmental cleanup, fire abatement, and other such public works projects while they are incarcerated to make effective the punitive, deterrent, and rehabilitative experiences of productive hard work, in order to reduce the danger that crime victims and their families will be again victimized by these inmates.

4. Establish guidelines for opening emergency jails and other such facilities to stop the early release of large numbers of convicted criminals from county jails caused by overcrowding of those jails.

5. Notify victims of all criminal proceedings and establish a specific and enforceable statutory right to notice during the criminal prosecutions of their wrongdoers.

6. Provide victims with a right to be heard at the critical stages of a criminal case, a right to a reasonable degree of safety and respect throughout the criminal justice process, a meaningful right to collect restitution from their criminal wrongdoers, and most importantly, a right to see their wrongdoers fairly and expeditiously punished as payment for the criminal wrongs they have committed and as a deterrent to their committing further crimes.

7. Impose on criminal prosecutors the highest standards of regular training and education in prosecutorial ethics and victims rights, to eliminate threats of bias and corruption arising from conflicts of interest, and to prohibit the exploitation of victims of crime for political or other purposes.

8. Provide assurances to victims that the criminal prosecutors who prosecute crimes on behalf of the People of the State of California and who are the primary sources of support and guidance to, and the sole courtroom voices of, victims of crime, are competent, ethical, non-conflicted, victim-sensitive, and respected career representatives of the People.

9. Ensure that the sentences and punishments individually imposed by judges on their criminal wrongdoers will be carried out as ordered, and not be undermined by political or economic pressures.

10. Secure justice for victims of crimes, by enforcing the Victims Bill of Rights passed by California's voters in 1982.

SECTION 4.

Section 12 of Article I of the California Constitution is repealed.

~~SEC. 12. A person shall be released on bail by sufficient sureties, except for:~~
~~(a) Capital crimes when the facts are evident or the presumption great;~~
~~(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or~~
~~(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.~~
~~Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.~~
~~A person may be released on his or her own recognizance in the court's discretion.~~

SECTION 5.

Section 28 of Article I of the California Constitution is amended to read:

SEC. 28. (a) *(1)* The People of the State of California find and declare that *criminal activity has a serious impact on the citizens of California. The People further find and declare that the rights of victims in criminal prosecutions is a subject of grave statewide concern.*

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

(3) The People further find and declare that ~~The~~ *the* rights of victims ~~pervade~~ *of crime must be paramount at every stage of* the criminal justice system~~,~~. ~~encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more~~ *These rights encompass the* basic expectation that persons who commit ~~felonious~~ *criminal* acts causing *physical, emotional, and economic* injury to *the person and property of others* ~~innocent victims~~ will be appropriately *and thoroughly investigated, appropriately* detained in custody, *and expeditiously charged, brought before the courts,* tried ~~by the courts~~, *sentenced* and sufficiently punished, so that the public safety is protected and encouraged, *and that the Legislature and other governing bodies that are responsible for ensuring that public safety budgets provide sufficient resources to house in any state prison, county jail, or other state or local correctional or rehabilitation facility, all persons sentenced to those institutions or otherwise judicially compelled to abide by limitations on their freedoms as punishment for criminal activity* ~~as a goal of highest importance~~.

(4) The People further find and declare that the right of victims of crime to expect that persons convicted of committing criminal acts are sufficiently punished in the manner and to the extent sentenced by the courts of the State of California, encompasses the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights, privileges, and comforts to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility as a punishment or correction for the commission of a crime. No statute enacted on or after January 1, 2008, that requires or authorizes that persons incarcerated in a penal facility in this State as a punishment for the commission of a criminal act, be granted rights, privileges, or comforts that are not required by the Constitution of the United States to be provided to such persons shall have any force and effect.

(5) The People further find and declare that victims of crime have the right to be informed about and to appropriately participate in judicial proceedings against their wrongdoers, the right to receive restitution from their wrongdoers for financial losses they have suffered as a result of the wrongdoers' criminal acts, and the right to be informed about and to participate in proceedings involving the punishment and incarceration of their wrongdoers.

(6) The People further find and declare that except for legislative acts that expand the power of the governor to grant a reprieve, pardon, or commutation of a sentence on an individual basis as provided in subdivision (a) of Section 8 of Article V, no final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any subsequent act of the Legislature or any initiative passed by the electorate

~~(6)~~ *(7)* ~~Such~~ *Finally, the People find and declare that the right to* public safety extends to public primary, elementary, junior high, and senior high school, *community college, college, and university* campuses, where students and staff have the right to be safe and secure in their persons.

(7) To accomplish ~~these~~ *the* goals *that criminal behavior be deterred and the disruption of the lives of California's citizens caused by that criminal behavior be minimized, and that the public safety be protected and encouraged, it is necessary that the laws of California relating to the criminal justice process be regularly updated and amended in order to protect the legitimate rights of victims of crime.* ~~, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.~~

(b) *(1) In order to preserve and protect a crime victim's rights to justice and due process of law, every crime victim, regardless of race, sex, age, religion, or economic status, shall be entitled to the following rights:*

(A) To be treated with fairness and respect for his or her dignity and privacy, to be free from intimidation, harassment, exploitation, abuse, and danger throughout the criminal and juvenile justice process, and to be free from unnecessary and unwanted courthouse encounters with a criminal defendant and his or her family and associates.

(B) To receive from the courts and from law enforcement agencies reasonably adequate protection from the accused and persons acting on behalf of the accused from harm and threats of harm arising from cooperation with prosecution efforts throughout the criminal or juvenile justice process.

(C) To have the safety of the victim and the family of the victim considered as an element in fixing the amount of bail and release conditions for the accused.

(D) To confidentiality and privacy of personal information regarding the crime victim and the family of the crime victim, to include home address, telephone number, school, and place of employment during the criminal process, unless the court finds that release of that information is compelled by the due process rights of the accused.

(E) To the enactment of statutes that promote and encourage the recruitment and retention of highly qualified attorneys to become career criminal prosecutors, that mandate and facilitate high levels of training of these prosecutors, that promote high standards of prosecutorial ethics and sensitivity to the needs and rights of crime victims, and that ensure that the prosecutor is free from actual or apparent conflicts of interest in representing the People of the State of California in handling the prosecution of the accused.

(F) To be informed about and given an opportunity to provide input into the decisions of the prosecuting attorney regarding the filing of charges against the accused.

(G) To reasonably confer with the prosecution, upon request, before the entry of a disposition of criminal or juvenile charges, and to be informed, upon request, of any pretrial disposition of those charges.

(H) To be informed of and to be present at any criminal proceedings at which the defendant, the prosecuting attorney, and the general public are entitled to be present.

(I) To be informed of his or her right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the crime victim consents.

(J) To be informed of his or her right to be represented by retained counsel as to any issue during the criminal prosecution, juvenile adjudication, or parole phases of the case.

(K) To provide pertinent information to a probation department official conducting a pre-sentencing investigation concerning the impact of the offense on the victim and the family of the victim prior to the sentencing of the defendant.

(L) To receive a copy of the pre-sentence report when available to the defendant, except for those portions made confidential by law.

(M) To be informed about and to be allowed to submit a written, electronically recorded, and oral statement at any proceeding involving a post-arrest release decision, plea, sentencing, or post-conviction release of the defendant, or any other proceeding in which a right or interest of the crime victim may be asserted.

(N) To a reasonable disposition that sufficiently punishes the wrongdoer, deters future criminal conduct, and provides for a speedy and prompt final conclusion of the case.

(O) To be informed, or to have easy access to information, when the accused or convicted person is arrested, has a

scheduled hearing relating to release on bail or own recognizance, is sentenced, is incarcerated, has escaped from custody, is scheduled for a parole hearing, is scheduled for release, or is actually released from custody.

(P) To receive prompt and full restitution from the adult or juvenile offender for any loss or injury suffered by the victim or the family of the victim.

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

(R) To an independent Board of Adult Parole Hearings whose members are free from political and economic influences and pressures in determining whether to grant parole to a state prisoner serving a life term of imprisonment, and to an independent Board of Juvenile Parole whose members are free from political and economic influences and pressures in determining whether to grant parole to a ward serving a term in a state juvenile justice facility.

(S) To be informed, if requested, of parole procedures, to be notified, if requested, of parole proceedings concerning the convicted wrongdoer, to participate in the parole process, to provide to the Board of Adult Parole Hearings information to be considered prior to the parole of the offender, and to be notified, if requested, of the parole or other release of the offender.

(T) To be informed of the rights of crime victims enumerated in this Constitution and in the statutes of the State of California.

(2) A crime victim, a guardian or legal representative of a crime victim, or the prosecuting attorney with the consent of the crime victim, may enforce the rights of crime victims enumerated in this constitution and other rights provided by law in any court as a matter of right. A victim's exercise of any right granted by this constitution or statutes of the State shall not be used as grounds for dismissing any criminal or juvenile proceeding or for setting aside any conviction or sentence.

(3) Except as specifically provided by statute enacted by the people or by the Legislature, nothing in this Section shall be deemed to create a civil cause of action for compensation or damages against any public employee or official or any officer of the court, any public agency, the State of California or any political subdivision thereof, or any other agency or person responsible for the enforcement of rights and provision of services described in this section.

(4) The granting of these rights to victims of crime shall not be construed to deny or disparage other rights possessed by crime victims.

(5) As used in this Section a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act against him or her. The term "victim" also includes the person's spouse, domestic partner, parent, child, sibling, or other lawful representative of a crime victim who is deceased, who is a minor, or who is incompetent, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or in the case of a minor victim, a person who the court finds will not act in the best interests of the minor

(c) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to *seek and secure* restitution, *supported by specific provisions of California law,* from the persons convicted of *or adjudicated to have committed* the crimes *or offenses* for losses they suffer. Restitution shall be ordered from the convicted *or adjudicated* ~~persons~~ *wrongdoers* in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. ~~The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.~~

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

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

~~(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.~~

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

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

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

(f) Public Safety Bail. (1) A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the victim, the family of the victim, and the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Bail shall not be reduced as a means of addressing jail overcrowding. Public safety shall be the primary consideration.

(2) A person may be released on his or her own recognizance in the discretion of the court, subject to the same factors considered in setting bail. However, no person shall be released on his or her own recognizance if any one of the following circumstances are true:

(A) The defendant is charged with the commission of a violent felony as described in subdivision (c) of Section 667.5;

(B) The defendant is charged with the commission of a serious felony as described in subdivision (c) of Section 1192.7;

(C) The defendant is charged with a felony alleged to have been committed while the defendant was on parole or probation; or

(D) The defendant is charged with a felony alleged to have been committed while the defendant was released from custody on bail or on own recognizance on another offense.

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

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

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

~~(g)~~ *(h)* ~~As~~ *While all felonies are serious crimes, as* used in this article, the term "serious felony" is *limited to* any crime *described* ~~defined~~ in *subdivision (c) of Section 1192.7* ~~Penal Code, Section 1192.7(c)~~.

SECTION 6.

Section 30 of Article I of the California Constitution is amended to read:

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

(d) In order to provide for fair and speedy resolution of postconviction petitions for relief, discovery in postconviction habeas corpus proceedings shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

SECTION 7.

Section 12.1 is added to Article 2 of the California Constitution to read:

Sec. 12.1. (a) Except as provided in subdivision (b), no statute proposed to the electors by the Legislature or by initiative, and no statute enacted by the Legislature that redefines, to the benefit of defendants, conduct subject to criminal sanctions, or that reduces or abolishes the punishment for a criminal act, or that creates a sentencing commission or other entity by any other name for the purpose of effecting reductions in sentences, shall have any effect upon any final judgment of conviction which has already imposed that punishment. No final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any such subsequent statute enacted by the Legislature.

EXHIBIT C

(Excerpts of Proposed Initiative #07-0088)

December 5, 2007

07-0088
Amdt. #2S

RECEIVED
DEC 05 2007
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Ms. Krystal Paris
nitiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, California
05814

Dear Ms. Paris,

As the proponent of the initiative titled The Victim's Rights Act of 2008-Marsy's Law, am submitting amendments within the 15 days allowed by law as your office continues prepare a Title and Summary. I have renamed it the Victims Rights and Protection Act: "Marsy's Law" was originally submitted November 20, 2007 and has been assigned the number 07-0088. I can be reached at Information can be seen at www.deputyda.com.

Sincerely,

Steve Ipsen

07-0088

Amdt. #2S

VICTIMS RIGHTS AND PROTECTION ACT:
MARSY'S LAW
DECEMBER 5, 2007

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose additions and amendments to the California Constitution and to the California Evidence Code, the California Government Code, and the California Penal Code, relating to the rights of victims of crime, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory additions and amendments (full title and text of the measure) read as follows:

SECTION 1. TITLE

This Measure shall be known and may be cited as the "Victims Rights and Protection Act: Marsy's Law."

SECTION 2. FINDINGS AND DECLARATIONS

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

1. The rights of victims of crime are simply stated. They include the right to notice and to be heard during critical stages of the criminal justice system proceedings; the right to receive restitution from the criminal wrongdoer; the right to the enactment of statutes that promote and encourage the recruitment and retention of highly trained, career criminal prosecutors who have high ethical standards, who are free from conflicts of interest, and who are sensitive to the needs and rights of crime victims; the right to be and feel reasonably safe throughout all of the criminal proceedings against the wrongdoer; the right to expect the individually determined sentence of a judge to be honored and fully carried out; the right to expect the Legislature to properly fund the criminal justice system, so that the rights of crime victims stated in this Findings and Declarations and that justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer that is an effective deterrent to future criminal wrongdoing.

2. The process by which criminal wrongdoers are held criminally accountable for their crimes has been given to the exclusive control of the government. The people of this state have surrendered any right or legal authority to take individual action to impose criminal punishment upon criminal wrongdoers, regardless of the extent of personal pain and suffering inflicted upon them by these criminal perpetrators.

3. It is, therefore, an important responsibility of government to ensure that law enforcement officials and prosecutors are enabled to employ an efficient justice system to investigate crimes committed against the people of this State, exercise their discretion to charge criminal wrongdoers with violations of the State's penal laws, detain criminal wrongdoers in order to ensure their attendance in criminal proceedings against them, protect crime victims and their families during the criminal justice process, fairly and speedily bring criminal wrongdoers to trial, impose just sentences on those wrongdoers who are convicted of the charges against them, and ensure that every individually imposed judicial sentence is fully and constitutionally carried out as ordered by the court.

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

5. The People of the State of California find that the "broad reform" of the criminal justice system intended to grant these basic rights mandated in the *Victims' Bill of Rights* initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the People. Victims of crime continue to be denied their right to swift and just punishment of their criminal wrongdoers, and to be denied their right to a criminal justice system that performs as it should.

6. The Criminal Justice System of California fails the victims and their families even in cases in which the rights of victims and the accused are the most critical - capital murder cases in which the law allows the imposition of a sentence of death upon the criminal wrongdoer.

7. "Night Stalker" Richard Ramirez, convicted murderer of 13 people, and 666 other "worst of the worst" murderers languish for decades on California's death row, draining almost $60 million each year from California's taxpayers just to house and feed them while an overwhelmed system of death penalty appeals grinds slowly to a halt, denying everyone affected by the devastation of murder, condemned inmates and the families of their victims, a timely resolution that assures that death verdicts and punishments are justly applied.

8. California's arcane death appeal process established in 1849, which requires automatic appeal to only one court, the California Supreme Court, composed of just seven jurists, has created a backlog of death cases that causes death penalty appeals to be unresolved for decades. Capital murderers sentenced to death go unrepresented by an appellate attorney for an average of more than three years while they sit on death row.

9. United States Circuit Court Judge Arthur Alarcon declared in 2007 that we "must bring an end to the appalling delay in reviewing California death penalty convictions and reduce wasteful expenditure of millions of dollars in housing death row inmates for decades before determining whether their conviction or sentence should be vacated or affirmed."

10. In a recent Associated Press interview, California Supreme Court Chief Justice Ronald George stated that California's 20-30 year death penalty process has become "dysfunctional."

11. Even if the California Supreme Court were able to resolve the appeals of just one capital murderer every week, it would take that Court 12 years to resolve the backlog of appeals of capital murderers already on death row, and that backlog increases by more than 25 new condemned murderers each year. This is broken criminal justice that demands repair.

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

13. Each year hundreds of convicted murderers sentenced to serve life in prison, seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of their murdered victims and waste millions of dollars each year. Only in California are convicted murderers given appointed attorneys paid by the tax dollars of California's citizens, and they are often given parole hearings every year. The families of their murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again freed to murder again.

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

15. Parole Board commissioners, whose appointments must be confirmed by the State Legislature, have reported that they have been pressured by state legislators to parole more murderers in order to reduce the population of California's overcrowded prisons

16. Prisoner rights groups push for laws to give state prison inmates privileges and comforts, such as access to pornography, violent "R" and "NC-17" movies, and overnight sex visits, seeking to reduce the punitive and deterrent value of punishment. Catering to these demands will bankrupt prison budgets and cause federal courts to order the release from prison of tens of thousands of convicted felons due to overcrowding in our prisons.

17. Like most victims of murder, Marsy was neither rich nor famous when she was murdered in 1983 at the age of 21 by a former boyfriend who lured her from her parents' home by threatening to kill himself. Instead he used a shotgun to brutally end her life when she entered his home in an effort to stop him from killing himself. Following her murderer's arrest, Marsy's mother was shocked to meet him at a local supermarket, learning that he had been released on bail without any notice to Marsy's family and without any opportunity for her family to state their opposition to his release.

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

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

20. The enactments and amendments made by the "Victims Rights Act of 2008 – Marsy's Law" constitute rights of victims of crime and their families or are necessary to effectuate those rights within the meaning of Section 28 of Article I of the California Constitution.

SECTION 3. STATEMENT OF PURPOSES AND INTENT

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

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

2. Provide the California Supreme Court greater authority, discretion, and resources to use more than one hundred California Court of Appeal justices to hear and resolve death penalty appeals.

3. Send convicted county jail inmates to do environmental cleanup, fire abatement, and other such public works projects while they are incarcerated to make effective the punitive, deterrent, and rehabilitative experiences of productive hard work, in order to reduce the danger that crime victims and their families will be again victimized by these inmates.

4. Establish guidelines for opening emergency jails and other such facilities to stop the early release of large numbers of convicted criminals from county jails caused by overcrowding of those jails.

5. Notify victims of all criminal proceedings and establish a specific and enforceable statutory right to notice during the criminal prosecutions of their wrongdoers.

6. Provide victims with a right to be heard at the critical stages of a criminal case, a right to a reasonable degree of safety and respect throughout the criminal justice process, a meaningful right to collect restitution from their criminal wrongdoers, and most importantly, a right to see their wrongdoers fairly and expeditiously punished as payment for the criminal wrongs they have committed and as a deterrent to their committing further crimes.

7. Impose on criminal prosecutors the highest standards of regular training and education in prosecutorial ethics and victims rights, to eliminate threats of bias and corruption arising from conflicts of interest, and to prohibit the exploitation of victims of crime for political or other purposes.

8. Provide assurances to victims that the criminal prosecutors who prosecute crimes on behalf of the People of the State of California and who are the primary sources of support and guidance to, and the sole courtroom voices of, victims of crime, are competent, ethical, non-conflicted, victim-sensitive, and respected career representatives of the People.

9. Ensure that the sentences and punishments individually imposed by judges on their criminal wrongdoers will be carried out as ordered, and not be undermined by political or economic pressures.

10. Secure justice for victims of crimes, by enforcing the Victims Bill of Rights passed by California's voters in 1982.

SECTION 4.

Section 12 of Article I of the California Constitution is repealed.

~~SEC. 12. A person shall be released on bail by sufficient sureties, except for:~~
~~(a) Capital crimes when the facts are evident or the presumption great;~~
~~(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or~~
~~(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.~~
~~Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.~~
~~A person may be released on his or her own recognizance in the court's discretion.~~

SECTION 5.

Section 28 of Article I of the California Constitution is amended to read:

SEC. 28. (a) *(1)* The People of the State of California find and declare that *criminal activity has a serious impact on the citizens of California. The People further find and declare that the rights of victims in criminal prosecutions is a subject of grave statewide concern.*

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

(3) The People further find and declare that ~~The~~ *the* rights of victims ~~pervade~~ *of crime must be paramount at every stage of* the criminal justice system~~,~~. ~~encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more~~ *These rights encompass the* basic expectation that persons who commit ~~felonious~~ *criminal* acts causing *physical, emotional, and economic* injury to *the person and property of others* ~~innocent victims~~ will be appropriately *and thoroughly investigated, appropriately* detained in custody, *and expeditiously charged, brought before the courts,* tried ~~by the courts~~, *sentenced* and sufficiently punished, so that the public safety is protected and encouraged, *and that the Legislature and other governing bodies that are responsible for ensuring that public safety budgets provide sufficient resources to house in any state prison, county jail, or other state or local correctional or rehabilitation facility, all persons sentenced to those institutions or otherwise judicially compelled to abide by limitations on their freedoms as punishment for criminal activity* ~~as a goal of highest importance~~.

(4) The People further find and declare that the right of victims of crime to expect that persons convicted of committing criminal acts are sufficiently punished in the manner and to the extent sentenced by the courts of the State of California, encompasses the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights, privileges, and comforts to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility as a punishment or correction for the commission of a crime. No statute enacted on or after January 1, 2008, that requires or authorizes that persons incarcerated in a penal facility in this State as a punishment for the commission of a criminal act, be granted rights, privileges, or comforts that are not required by the Constitution of the United States to be provided to such persons shall have any force and effect.

(5) The People further find and declare that victims of crime have the right to be informed about and to appropriately participate in judicial proceedings against their wrongdoers, the right to receive restitution from their wrongdoers for financial losses they have suffered as a result of the wrongdoers' criminal acts, and the right to be informed about and to participate in proceedings involving the punishment and incarceration of their wrongdoers.

(6) The People further find and declare that except for legislative acts that expand the power of the governor to grant a reprieve, pardon, or commutation of a sentence on an individual basis as provided in subdivision (a) of Section 8 of Article V, no final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any subsequent act of the Legislature or any initiative passed by the electorate

~~(6)~~ *(7)* ~~Such~~ *Finally, the People find and declare that the right to* public safety extends to public primary, elementary, junior high, and senior high school, *community college, college, and university* campuses, where students and staff have the right to be safe and secure in their persons.

(7) To accomplish ~~these~~ *the* goals *that criminal behavior be deterred and the disruption of the lives of California's citizens caused by that criminal behavior be minimized, and that the public safety be protected and encouraged, it is necessary that the laws of California relating to the criminal justice process be regularly updated and amended in order to protect the legitimate rights of victims of crime.* ~~, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.~~

(b) *(1) In order to preserve and protect a crime victim's rights to justice and due process of law, every crime victim, regardless of race, sex, age, religion, or economic status, shall be entitled to the following rights:*

(A) To be treated with fairness and respect for his or her dignity and privacy, to be free from intimidation, harassment, exploitation, abuse, and danger throughout the criminal and juvenile justice process, and to be free from unnecessary and unwanted courthouse encounters with a criminal defendant and his or her family and associates.

(B) To receive from the courts and from law enforcement agencies reasonably adequate protection from the accused and persons acting on behalf of the accused from harm and threats of harm arising from cooperation with prosecution efforts throughout the criminal or juvenile justice process.

(C) To have the safety of the victim and the family of the victim considered as an element in fixing the amount of bail and release conditions for the accused.

(D) To confidentiality and privacy of personal information regarding the crime victim and the family of the crime victim, to include home address, telephone number, school, and place of employment during the criminal process, unless the court finds that release of that information is compelled by the due process rights of the accused.

(E) To the enactment of statutes that promote and encourage the recruitment and retention of highly qualified attorneys to become career criminal prosecutors, that mandate and facilitate high levels of training of these prosecutors, that promote high standards of prosecutorial ethics and sensitivity to the needs and rights of crime victims, and that ensure that the prosecutor is free from actual or apparent conflicts of interest in representing the People of the State of California in handling the prosecution of the accused.

(F) To be informed about and given an opportunity to provide input into the decisions of the prosecuting attorney regarding the filing of charges against the accused.

(G) To reasonably confer with the prosecution, upon request, before the entry of a disposition of criminal or juvenile charges, and to be informed, upon request, of any pretrial disposition of those charges.

(H) To be informed of and to be present at any criminal proceedings at which the defendant, the prosecuting attorney, and the general public are entitled to be present.

(I) To be informed of his or her right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the crime victim consents.

(J) To be informed of his or her right to be represented by retained counsel as to any issue during the criminal prosecution, juvenile adjudication, or parole phases of the case.

(K) To provide pertinent information to a probation department official conducting a pre-sentencing investigation concerning the impact of the offense on the victim and the family of the victim prior to the sentencing of the defendant.

(L) To receive a copy of the pre-sentence report when available to the defendant, except for those portions made confidential by law.

(M) To be informed about and to be allowed to submit a written, electronically recorded, and oral statement at any proceeding involving a post-arrest release decision, plea, sentencing, or post-conviction release of the defendant, or any other proceeding in which a right or interest of the crime victim may be asserted.

(N) To a reasonable disposition that sufficiently punishes the wrongdoer, deters future criminal conduct, and provides for a speedy and prompt final conclusion of the case.

(O) To be informed, or to have easy access to information, when the accused or convicted person is arrested, has a

scheduled hearing relating to release on bail or own recognizance, is sentenced, is incarcerated, has escaped from custody, is scheduled for a parole hearing, is scheduled for release, or is actually released from custody.

(P) To receive prompt and full restitution from the adult or juvenile offender for any loss or injury suffered by the victim or the family of the victim.

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

(R) To an independent Board of Adult Parole Hearings whose members are free from political and economic influences and pressures in determining whether to grant parole to a state prisoner serving a life term of imprisonment, and to an independent Board of Juvenile Parole whose members are free from political and economic influences and pressures in determining whether to grant parole to a ward serving a term in a state juvenile justice facility.

(S) To be informed, if requested, of parole procedures, to be notified, if requested, of parole proceedings concerning the convicted wrongdoer, to participate in the parole process, to provide to the Board of Adult Parole Hearings information to be considered prior to the parole of the offender, and to be notified, if requested, of the parole or other release of the offender.

(T) To be informed of the rights of crime victims enumerated in this Constitution and in the statutes of the State of California.

(2) A crime victim, a guardian or legal representative of a crime victim, or the prosecuting attorney with the consent of the crime victim, may enforce the rights of crime victims enumerated in this constitution and other rights provided by law in any court as a matter of right. A victim's exercise of any right granted by this constitution or statutes of the State shall not be used as grounds for dismissing any criminal or juvenile proceeding or for setting aside any conviction or sentence.

(3) Except as specifically provided by statute enacted by the people or by the Legislature, nothing in this Section shall be deemed to create a civil cause of action for compensation or damages against any public employee or official or any officer of the court, any public agency, the State of California or any political subdivision thereof, or any other agency or person responsible for the enforcement of rights and provision of services described in this section.

(4) The granting of these rights to victims of crime shall not be construed to deny or disparage other rights possessed by crime victims.

(5) As used in this Section a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act against him or her. The term "victim" also includes the person's spouse, domestic partner, parent, child, sibling, or other lawful representative of a crime victim who is deceased, who is a minor, or who is incompetent, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or in the case of a minor victim, a person who the court finds will not act in the best interests of the minor

(c) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to *seek and secure* restitution, *supported by specific provisions of California law,* from the persons convicted of *or adjudicated to have committed* the crimes *or offenses* for losses they suffer. Restitution shall be ordered from the convicted *or adjudicated* ~~persons~~ *wrongdoers* in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. ~~The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.~~

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

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

~~(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.~~

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

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

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

(f) Public Safety Bail. (1) A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the victim, the family of the victim, and the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Bail shall not be reduced as a means of addressing jail overcrowding. Public safety shall be the primary consideration.

(2) A person may be released on his or her own recognizance in the discretion of the court, subject to the same factors considered in setting bail. However, no person shall be released on his or her own recognizance if any one of the following circumstances are true:

(A) The defendant is charged with the commission of a violent felony as described in subdivision (c) of Section 667.5;

(B) The defendant is charged with the commission of a serious felony as described in subdivision (c) of Section 1192.7;

(C) The defendant is charged with a felony alleged to have been committed while the defendant was on parole or probation; or

(D) The defendant is charged with a felony alleged to have been committed while the defendant was released from custody on bail or on own recognizance on another offense.

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

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

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

~~(g)~~ *(h)* ~~As~~ *While all felonies are serious crimes, as* used in this article, the term "serious felony" is *limited to* any crime *described* ~~defined~~ in *subdivision (c) of Section 1192.7* ~~Penal Code, Section 1192.7(c)~~.

SECTION 6.

Section 30 of Article I of the California Constitution is amended to read:

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

(d) In order to provide for fair and speedy resolution of postconviction petitions for relief, discovery in postconviction habeas corpus proceedings shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

SECTION 7.

Section 12.1 is added to Article 2 of the California Constitution to read:

Sec. 12.1. (a) Except as provided in subdivision (b), no statute proposed to the electors by the Legislature or by initiative, and no statute enacted by the Legislature that redefines, to the benefit of defendants, conduct subject to criminal sanctions, or that reduces or abolishes the punishment for a criminal act, or that creates a sentencing commission or other entity by any other name for the purpose of effecting reductions in sentences, shall have any effect upon any final judgment of conviction which has already imposed that punishment. No final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any such subsequent statute enacted by the Legislature.

EXHIBIT D

(Excerpts of Proposed Initiative #07-0097)

The Victims' Rights and Protection Act of 2008:
Implementation and Enforcement Tools for Victims, Prosecutors and Judges

07-0097
Amdt. #3S

December 24, 2007

Krystal Paris
Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, California 95814

Dear Ms. Paris,

As the proponent of proposed ballot initiative number 07 0097 currently titled in part "The Victims Right's and Protection Act of 2008" version 4, filed December 7, 2007 and amended Dec. 13, 2007, I am submitting amendments to both the name and substance of the initiative within 15 days as allowed by law. Attached is a copy of the proposed initiative as amended titled: **The Victims' Rights and Protection Act of 2008:**
Implementation and Enforcement Tools for Victims, Prosecutors, and Judges.
I am filing this in my individual capacity and on behalf of no other individual, group of
individuals or organization. I can be contacted regarding this initiative at 213 700 - 4133 or emailed at addaemail@aol.com.

Sincerely,

Steven J. Ipsen

07-0097
Amdt. #3S

VICTIMS' RIGHTS AND PROTECTION ACT OF 2008: IMPLEMENTATION AND ENFORCEMENT TOOLS FOR VICTIMS, PROSECUTORS AND JUDGES DECEMBER 24, 2007

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose additions and amendments to the California Constitution and to the California Evidence Code, the California Government Code, the California Labor Code, and the California Penal Code, relating to the rights of victims of crime, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory additions and amendments (full title and text of the measure) read as follows:

SECTION 1. TITLE

This Measure shall be known and may be cited as the "Victims' Rights And Protection Act of 2008: Implementation and Enforcement Tools for Victims, Prosecutors and Judges."

SECTION 2. FINDINGS AND DECLARATIONS

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

1. The rights of victims of crime are simply stated. They include the right to notice and to be heard during critical stages of the criminal justice system proceedings; the right to receive restitution from the criminal wrongdoer; the right to the enactment of statutes that promote and encourage the recruitment and retention of highly trained, career criminal prosecutors who have high ethical standards, who are free from conflicts of interest, and who are sensitive to the needs and rights of crime victims; the right to be and feel reasonably safe throughout all of the criminal proceedings involving the wrongdoer; the right to expect the individually determined sentence of a judge to be honored and fully carried out; the right to expect the Legislature to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and that justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer that is an effective deterrent to future criminal wrongdoing.

2. The process by which criminal wrongdoers are held criminally accountable for their crimes has been given to the exclusive control of the government. The people of this state have surrendered any right or legal authority to take individual action to impose criminal punishment upon criminal wrongdoers, regardless of the extent of personal pain and suffering inflicted upon them by these criminal perpetrators.

3. It is, therefore, an important responsibility of government to ensure that law enforcement officials and prosecutors are enabled to employ an efficient justice system to investigate crimes committed against the people of this state, exercise their discretion to charge criminal wrongdoers with violations of the state's penal laws, detain criminal wrongdoers in order to ensure their attendance in criminal proceedings against them, protect crime victims and their families during the criminal justice process, fairly and speedily bring criminal wrongdoers to trial, impose just sentences on those wrongdoers who are convicted of the charges against them, and ensure that every individually imposed judicial sentence is fully and constitutionally carried out as ordered by the court.

4. The "Victims' Rights and Protection Act of 2008" is needed to implement specific remedies in California's criminal justice system, a system that has failed to fully recognize and adequately enforce the rights of victims of crime. This initiative is inspired by hundreds of thousands of victims of crime and their families who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights.

5. The "broad reform" of the criminal justice system intended to grant these basic rights which was mandated in the *Victims' Bill of Rights* initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the People. Victims of crime continue to be denied their right to swift and just punishment of their criminal wrongdoers, and to be denied their right to a system of criminal justice that performs as it should.

6. The criminal justice system of California fails victims and their families even in cases in which the rights of victims and the accused can be the most critically impacted - capital murder cases in which the law allows the imposition of a sentence of death upon the criminal wrongdoer.

7. "Night Stalker" Richard Ramirez, convicted murderer of 13 people, and 666 other " worst of the worst " murderers languish for decades on California's death row, draining almost $60 million each year from California's taxpayers just to house and feed them while an overwhelmed system of death penalty appeals grinds slowly, denying everyone affected by the devastation of murder, condemned inmates and the families of their victims, a timely resolution that assures that death verdicts and punishments are justly applied.

8. California's arcane death penalty appeal process established in 1849, which requires automatic appeal to only the California Supreme Court, one court composed of just seven jurists, has created a backlog of death penalty appeals that causes these cases to be unresolved for decades. Capital murderers sentenced to death go unrepresented by an appellate attorney for an average of more than three years while they sit on death row.

9. United States Circuit Court Judge Arthur Alarcon declared in 2007 that we "must bring an end to the appalling delay in reviewing California death penalty convictions and reduce wasteful expenditure of millions of dollars in housing death row inmates for decades before determining whether their conviction or sentence should be vacated or affirmed."

10. In a recent Associated Press interview, California Supreme Court Chief Justice Ronald George stated that California's 20- to 30-year death penalty process has become "dysfunctional."

11. Even if the California Supreme Court were able to resolve the appeals of just one capital murderer every week, it would take that Court 12 years to resolve the backlog of appeals of capital murderers already on death row, and that backlog increases by more than 25 additional condemned murderers each year. This is broken criminal justice that cries out for repair.

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

13. Each year hundreds of convicted murderers sentenced to serve life in prison seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of their murdered victims and waste millions of dollars each year. Only in California are convicted murderers appointed attorneys paid by the tax dollars of its citizens, and these convicted murderers are often given parole hearings every year. The families of their murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again free to murder again.

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

15. Parole Board commissioners, whose appointments must be confirmed by the State Legislature, have reported that they have been pressured by legislators to parole more murderers in order to reduce the population of California's overcrowded prisons.

16. Prisoner rights groups push for laws to give state prison inmates privileges and comforts, such as access to pornography, violent "R" and "NC-17" movies, and overnight sex visits, seeking to reduce the punitive and deterrent value of punishment. Catering to these demands threatens to bankrupt prison budgets and to cause federal judges to order the release of tens of thousands of convicted felons due to overcrowding in our prisons.

17. Thousands of crime victims have experienced the failure of our criminal justice system to notify them of their rights, failure to give them notice of important hearings in the prosecutions of their criminal wrongdoers, failure to provide them with an opportunity to speak and participate, failure to impose actual and just punishment upon their wrongdoers, and failure to extend to them some measure of finality to the trauma inflicted upon them by their wrongdoers.

18. The specific constitutional and statutory enactments and amendments made by the "Victims' Rights and Protection Act of 2008" recognize the rights which victims of crime and their families must have in the prosecution of criminal wrongdoers, and they constitute specific implementation of those rights within the meaning of Sections 28 and 28.1 of Article I of the California Constitution.

SECTION 3. STATEMENT OF PURPOSES AND INTENT

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

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

2. Provide the California Supreme Court greater authority, discretion, and resources to use more than 100 California Court of Appeal justices to hear and resolve death penalty appeals.

3. Send convicted county jail inmates to do environmental cleanup, fire abatement, and other such public works projects while they are incarcerated to make effective the punitive, deterrent, and rehabilitative experiences of productive hard work, in order to reduce the risk that crime victims and their families will be again victimized by these inmates.

4. Establish guidelines for opening emergency jails and other such facilities to stop the early release of large numbers of convicted criminals from county jails caused by overcrowding of those jails.

5. Notify victims of all criminal proceedings and establish a specific and enforceable statutory right to notice during the criminal prosecutions of their wrongdoers.

6. Provide victims with a right to be heard at the critical stages of a criminal case, a right to a reasonable degree of safety and respect throughout the criminal justice process, a meaningful right to collect restitution from their criminal wrongdoers, and a right to see their wrongdoers fairly and expeditiously punished as payment for the criminal wrongs they have committed and as a deterrent to their committing further crimes.

7. Impose on criminal prosecutors the highest standards of regular training and education in prosecutorial ethics and victims' rights, to eliminate threats of bias and corruption arising from conflicts of interest, and to prohibit the exploitation of victims of crime for political or other purposes.

8. Provide assurances to victims that the criminal prosecutors who litigate on behalf of the People of the State of California and who are the primary sources of support and guidance to, and the sole courtroom voices of, victims of crime, are highly competent, ethical, non-conflicted, victim-sensitive, and respected career representatives of the People.

9. Ensure that the sentences and punishments individually imposed by judges on their criminal wrongdoers will be carried out as ordered, and not be undermined by political or economic pressures.

10. Secure justice for victims of crimes by enforcing the Victims Bill of Rights passed by California's voters in 1982.

SECTION 4.

Section 12 of Article I of the California Constitution is repealed.

~~SEC. 12. A person shall be released on bail by sufficient sureties, except for:~~
~~(a) Capital crimes when the facts are evident or the presumption great;~~

~~(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or~~

~~(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.~~

~~Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.~~

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

SECTION 5.

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

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

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

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

(4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately *and thoroughly investigated, appropriately* detained in custody, *brought before the courts of California even if arrested outside the state,* tried by the courts *in a timely manner, sentenced,* and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

(13) To ~~R~~restitution.

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

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

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

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

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

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

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

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

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

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

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is

deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

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

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

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

~~(e)~~ *(3)* Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, *the safety of the victim*, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

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

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

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

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

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

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

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

SECTION 6.

Section 28.1 is added to Article I of the California Constitution to read:

Sec. 28.1. In addition to the collective rights of victims of crime that are enumerated in subdivision (f) of Section 28 of Article I, the People of the State of California and the victims of crime are entitled to the following collective rights:

(a) Public Safety Own Recognizance Release. A person may be released on his or her own recognizance in the discretion of the court, subject to the same factors considered in setting bail. However, no person shall be released on own recognizance if any one of the following circumstances is true:

(1) The defendant is charged with the commission of a felony that is listed or described in subdivision (c) of Section 667.5;

(2) The defendant is charged with the commission of a felony that is listed or described in subdivision (c) of Section 1192.7;

(3) The defendant is charged with a felony that is alleged to have been committed while the defendant was on parole or probation; or

(4) The defendant is charged with a felony that is alleged to have been committed while the defendant was released from custody on bail or on own recognizance on another offense.

(b) High Prosecutorial Standards. The statutes of this state shall promote and encourage the recruitment and retention of highly qualified attorneys to become career criminal prosecutors; shall mandate and facilitate high training standards for prosecutors, high standards of prosecutorial ethics, and prosecutor sensitivity to the needs and rights of crime victims; and shall ensure that prosecutors are free from actual or apparent conflicts of interest in representing the People of the State of California in handling the prosecution of the accused.

(c) Effective Government Enforcement of Victims' Rights. The criminal justice system shall maintain an easily accessed permanent record of victims' requests for notification of and participation in criminal proceedings in order to effectuate the rights of victims to attend and be heard.

(d) Appropriate Case Dispositions. Criminal wrongdoers shall be sufficiently punished in order to deter future criminal conduct.

(e) Independent Parole Authority. The State's parole authority shall be independent and free from undue political and economic influences and shall function in a victim-friendly fashion.

SECTION 7.

Section 30 of Article I of the California Constitution is amended to read:

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

(d) In order to provide for fair and speedy resolution of postconviction petitions for relief, discovery in postconviction habeas corpus proceedings shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

SECTION 8.

Section 12.1 is added to Article II of the California Constitution to read:

Sec. 12.1. (a) Except as provided in subdivision (b), no statute proposed to the electors by the Legislature or by initiative, and no statute enacted by the Legislature that redefines, to the benefit of defendants, conduct subject to criminal sanctions, or that reduces or abolishes the punishment for a criminal act, or that creates a sentencing commission or other entity by any other name for the purpose of effecting reductions in sentences, shall have any effect upon any final judgment of conviction which has already imposed that punishment. No final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any such subsequent statute enacted by the Legislature.

(b) Nothing in this section shall be deemed to prohibit or limit the power of the Governor to grant a reprieve, pardon, or commutation after sentence of any person convicted of a criminal offense, as provided in subdivision (a) of Section 8 of Article V, to prohibit or limit the power of the Legislature or the people by initiative or by legislative act to expand or modify the powers of the Governor to grant a reprieve, pardon, or commutation of the sentence to any person on an individual basis, or to prohibit or limit the power of the Legislature or the people by initiative or by legislative act to modify the standards and procedures for granting parole.

SECTION 9.

Section 8.1 is added to Article IV of the California Constitution to read:

Sec. 8.1. (a) Except as provided in subdivision (b), no bill enacted by the Legislature that redefines, to the benefit of defendants, conduct subject to criminal sanctions, or that reduces or abolishes the punishment for a criminal act, or that creates a sentencing commission or other entity by any other name for the purpose of effecting reductions in sentences,

EXHIBIT E

(Notice of Failure of Proposed Initiative #07-0088)

07-0088

DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

July 23, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND
PROPONENT (08234)

FROM: KATHERINE MONTGOMERY
Associate Elections Analyst

SUBJECT: FAILURE OF INITIATIVE #1319

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named constitutional amendment and statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed.**

TITLE: CRIMINAL JUSTICE SYSTEM. VICTIMS' RIGHTS.
CONSTITUTIONAL AMENDMENT AND STATUTE.

SUMMARY DATE: 01/30/08

PROPONENT: Steven J. Ipsen

EXHIBIT F

(Notice of Failure of Proposed Initiative #07-0095)

DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

07-0095

July 23, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND PROPONENT (08235)

FROM: KATHERINE MONTGOMERY
Associate Elections Analyst

SUBJECT: FAILURE OF INITIATIVE #1320

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named constitutional amendment and statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: CRIMINAL JUSTICE SYSTEM. VICTIMS' RIGHTS. CONSTITUTIONAL AMENDMENT AND STATUTE.

SUMMARY DATE: 01/30/08

PROPONENT: Steven J. Ipsen

EXHIBIT G

(Notice of Failure of Proposed Initiative #07-0096)

07-0096

DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

July 23, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND PROPONENT (08236)

FROM: KATHERINE MONTGOMERY
Associate Elections Analyst

SUBJECT: FAILURE OF INITIATIVE #1321

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named constitutional amendment and statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: CRIMINAL JUSTICE SYSTEM. VICTIMS' RIGHTS. CONSTITUTIONAL AMENDMENT AND STATUTE.

SUMMARY DATE: 01/30/08

PROPONENT: Steven J. Ipsen

EXHIBIT H

(Notice of Failure of Proposed Initiative #07-0097)

07-0097

DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

July 23, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND
PROPONENT (08238)

FROM: KATHERINE MONTGOMERY
Associate Elections Analyst

SUBJECT: FAILURE OF INITIATIVE #1324

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named constitutional amendment and statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: CRIMINAL JUSTICE SYSTEM. VICTIMS' RIGHTS.
CONSTITUTIONAL AMENDMENT AND STATUTE.

SUMMARY DATE: 02/08/08

PROPONENT: Steven J. Ipsen

EXHIBIT I

EDITORIALS OPINION

No on Proposition 9

SEP 26, 2008 | 12:00 AM

The Times recommends a straightforward approach to the measures on this November's ballot that tinker with California's criminal justice system: No, no and no.

Add Proposition 9 to the terrible troika that includes propositions 5 and 6 discussed above. It in part duplicates a "victims' bill of rights" measure that Californians adopted at the ballot box 26 years ago, but it would move many of its provisions from the statute books into the state Constitution. In addition, new rights would be recognized for family members of crime victims, most often in parole hearings, where families would be able to appoint someone to speak for them. The frequency of hearings would be reduced.

The measure contains some good ways to make life more bearable for the loved ones of crime victims. For example, it requires police officers who respond to crime scenes to give cards to grieving family members that clue them in on what to do -- where to seek help, what happens next in the criminal justice process, what rights they have in

court. The problem is that this provision, as well as several less beneficial ones in Proposition 9, would be engraved in the state Constitution, subject to change only by a three-quarters vote of the Legislature or another ballot measure. That makes it extraordinarily difficult to correct errors or update the law.

Officers in Orange County already pass out cards to victims' families, and a better approach would be for lawmakers to insist that police across the state do the same.

Other provisions may appear similarly humane but actually upend the criminal justice system in a naive attempt to "even the playing field" between defendants and victims' families. The American legal system intentionally and properly distances families from prosecutions; the goal is evenhanded justice. The level of punishment a criminal receives should not depend on how persistent a particular family is in pleading for punishment or blocking parole. Civilized justice rejects vendetta and instead places retribution in the hands of the entire society. It may seem depersonalizing, but that's a goal, not a defect, of our system.

If the concern is protection of families from further victimization, as proponents claim, that goal can be met without granting families a new and inappropriate role in prosecutions. The Times urges a no vote on Proposition 9.

For information on all the November ballot races, as well as previous Times endorsements, log on to the Opinion section's Vote-o-rama at latimes.com/news/opinion/elections.

EXHIBIT J

News

Editorial: Proposition 9 would increase prison costs; vote no

By **MERCURY NEWS EDITORIAL** | Mercury News
October 14, 2008 at 12:50 pm

Like Proposition 6, its throw-money-at-crime cousin, Proposition 9 would guarantee that California continues to outpace the rest of the nation in prison costs and incarceration rates — the opposite direction needed for a state that can't fund its schools or pay its bills.

The initiative, the Victims' Rights and Protection Act of 2008, would codify in the state constitution many of the rights that victims of crime already have in law. But its main effect would be to ban the early release, under any condition, of prisoners before fully serving their sentences. The Legislative Analyst's Office projects this will add hundreds of millions of dollars a year to the state budget. The initiative may also ban early release at county jails, although it could conflict with federal court orders that have set population caps in several counties.

The state's 33 prisons now devour $10 billion of state spending. A main reason they're overcrowded is that most nonviolent felons receive no training or drug therapy, then bounce in and out of jail. Aging and sick inmates vegetate there, costing far more than sending them home or to a nursing home would.

Earlier this year, Gov. Arnold Schwarzenegger proposed the early release of thousands of nonviolent prisoners. He later withdrew the plan, but governors and legislators need this option; otherwise, prison costs increasingly will crowd out other spending priorities — higher education, health care, state police — that voters say they want.

That's why groups like the California Teachers Association, the California Nurses Association and the state Democratic Party oppose the initiative. Voters should, too.

The big donor behind Proposition 9 is Henry Nicholas, whose sister was murdered by her boyfriend two decades ago. That's why it's also known as Marsy's Law. Nicholas, a co-founder of the semiconductor company Broadcom, is also funding Proposition 6, which would perpetually increase budgets for police and district attorneys and add jail cells without a new source of funding. Nicholas may get to observe the impact of Proposition 9 up close and personal: He's facing drug and fraud charges in a stock-backdating scandal that could land him in prison.

Crime victims have the right to be heard at sentencing and parole hearings. Proposition 9 would extend the right to every phase of the judicial process. It also would lengthen the time between parole hearings to as many as 15 years for those facing indeterminate-to-life sentences. That would spare relatives of victims the emotional distress of more frequent hearings, but it also could deny inmates due process they may have earned.

Some parts of the initiative have merit. It would make restitution to victims the top priority for fees the courts collect, and it would require the police to give crime victims a card with information about their rights. But the Legislature can pass these requirements without saddling the Constitution with the initiative's other demands. Proposition 9's damage outweighs its benefits. Vote no.

Mercury News Editorial

EXHIBIT K

SFGATE https://www.sfgate.com/opinion/article/Props-6-and-9-are-budget-busters-3266152.php

Props. 6 and 9 are budget busters

THE CHRONICLE RECOMMENDS: No on Props. 6 and 9

Published 4:00 am PDT, Thursday, October 9, 2008

One of the reasons that California has a multibillion-dollar structural deficit is that voters keep approving spending mandates without providing a way to pay for them.

As a result, our elected representatives in Sacramento have less and less discretion to fund priorities that are not "locked in" by the electorate. This ballot-box budgeting results in pressure to make either deep cuts in programs that are not protected by voter mandate - higher **education**, law enforcement, parks, many social programs - or to raise taxes.

Propositions 6 and 9, promoted as "tough on crime," continue this practice of legislating through the ballot box.

Prop. 6, the "Safe Neighborhoods Act," is a prime example of a measure with a catchy title but with significant implications for both the **state budget** and the priorities of law enforcement. This 32-page measure would make 50 changes in state law and commit $965 million a year to certain state and local criminal justice programs.

Prop. 6 would increase an array of sentences on crimes related to street gangs, drug dealing and guns. For example, a gang member convicted of a violent felony would get an extra 10 years in prison. Accomplices in crimes in which a gun was used - such as a drive-by shooting - would be subjected to the same enhanced penalties as the shooter. It would increase the penalties on gang-related graffiti and prohibit illegal immigrants arrested for violent felonies or gang crimes from being released on bail without a hearing.

While Californians who are concerned about crime might be tempted to approve any shopping list of toughened penalties put before them, they should consider that the current laws are overcrowding prisons to the point that the state is at the risk of a federal takeover of the system. Also, the intervention and prevention programs funded by this measure may or may not prove to be the most efficient and effective use of our scarce resources.

Prop. 9, designed to strengthen the rights of victims and to make it more difficult to release inmates from prison, also would have an enormous budget impact. It expands the victims' rights that were approved by voters in 1982.

Its more consequential change would be its restrictions on early-release programs to relieve overcrowding - such as those that have been considered for nonviolent offenders by Gov. **Arnold Schwarzenegger** and state legislators - and tighter rules on parole. For example, some inmates who are eligible for parole now get hearings on their suitability every year - with a maximum wait of five years between hearings. Prop. 9

would give the parole board the discretion to require a parole-eligible inmate to wait up to 15 years for his next hearing.

The Legislative Analyst's Office has projected that the cost of Prop. 9 could amount to "hundreds of millions of dollars" every year.

California voters should reject Props. 6 and 9.

READ ANOTHER OPINION

They left no doubt what they think of women

Collins decides: Yes on Kavanaugh

Tough votes reveal character - and the importance of women in...

Is the Supreme Court salvageable?

EXHIBIT L

The New York Times

Opinion | EDITORIAL

Fiscal Disaster in California

OCT. 9, 2008

The mandatory sentencing craze that has swept the country over the last 30 years did little to cut back the drug trade, but it drove up the prison population and pushed corrections costs to ruinous levels. The process was especially destructive in California, where a federal court has placed the prison system's dangerously decrepit medical services under a receiver who wants the state to cough up $8 billion to bring that system up to constitutional standards.

The last thing California residents need at this point are new policies that land even more people behind bars and drive up prison spending further. But November's ballot in California, the birthplace of irresponsible government by referendum, includes two costly initiatives that would do just that.

California voters need to reject Propositions 6 and 9.

Proposition 6, which is misleadingly titled the Safe Neighborhoods Act, recreates the failed criminal justice policies of the past. According to an analysis by the state attorney general, this proposal would make about 30 changes in criminal laws and would create entirely new crimes, some with the potential to produce additional life sentences.

It would expand the conditions under which juveniles could be tried as adults, flying in the face of federally backed studies that show that making it easier to try juveniles as adults causes more crime, not less.

It would cost Californians nearly a billion dollars, for starters, in spending on law enforcement, and prosecution — money that would be diverted from, among other things, health, education, parks and environmental protection. Over the years, Proposition 6 would drive the state deeper into the hole by requiring automatic funding increases keyed to inflation.

Proposition 9 is in some ways even more extreme. It would amend the constitution to give victims an outsize influence in criminal cases turning dispassionate justice into family vengeance.

It also would worsen prison overcrowding by restricting early-release programs, and it would undermine law and order behind bars by eliminating incentives for good behavior. According to a state analysis, this measure could potentially cost states and localities hundreds of millions of dollars a year.

Californians have harmed themselves before by adopting costly programs that drain state coffers while providing for no new funding. To do so again at this perilous point would be fiscal suicide.

A version of this editorial appears in print on , on Page A32 of the New York edition with the headline: Fiscal Disaster in California.

EXHIBIT M

Victims' rights effort advances - Sacramento Bee, The (CA) - April 29, 2008 - page B2

April 29, 2008 | Sacramento Bee, The (CA) | Art Campos | Page B2

Nearly 93,000 signatures were submitted to elections offices in Sacramento and Placer counties Monday in support of a potential ballot measure that would give crime victims more constitutionally protected rights.

The effort was part of a statewide campaign that saw about 1.2 million signatures submitted to qualify a measure known as "**Marsy's Law**" for the November ballot.

Mitch Zak, a spokesman for the proposed measure, said 763,789 signatures of registered voters are needed to get it on the ballot.

Under **Marsy's Law**, crime victims would be allowed input in setting bail or release conditions for defendants, could refuse interviews and deposition requests by defendants' lawyers, and would be notified before a defendant is sentenced, makes a plea bargain or is released from jail or prison.

The proposal is named after a 21-year-old university student in Santa Barbara who was murdered in 1983. The victim's mother encountered the defendant, who was out on bail, in a store shortly after his arrest."

EXHIBIT N

Los Angeles Times ARTICLE COLLECTIONS

← Back to Original Article

Initiatives tug at voters' convictions

November ballot measures will address weighty topics such as gay marriage, abortion and animal treatment.

June 29, 2008 | Patrick McGreevy | Times Staff Writer

SACRAMENTO — Emotions may run high for California voters in November, not just over the choice of the next president but also over many of the 11 initiatives on the same ballot that tap into their personal beliefs.

Voters will decide whether to ban same-sex marriage, require parents to be notified before an abortion is performed on a minor, free farm animals from tight enclosures and put criminals in jail longer.

Other measures involve less charged issues, such as stripping legislators of the power to draw their districts and promoting clean energy.

"You have political reform, cultural issues; there will be something to interest everybody," said Allan Hoffenblum, a Republican strategist who publishes Target Book, a nonpartisan handicapper of political races in California. "If you are not interested in redistricting, then maybe you are interested in gay marriage."

The deadline has passed for initiatives to qualify for the ballot by petition, but the Legislature could still choose to add propositions to the list.

Although voters may face some hard work wading through piles of election guides and campaign mailers, they can take some comfort in that they were not voting in November 1913, when there were 48 ballot measures, a record that stands today.

A heated debate is brewing over the measure that would amend the California Constitution to say that only marriage between a man and a woman is valid or recognized in the state. The issue will be decided less than five months after same-sex couples throughout California began exchanging wedding vows in the wake of a court decision upholding their right to do so.

Eight years ago, about 61% of California voters approved a ballot measure that said the state would recognize only marriages between a man and a woman. That measure, which did not change the Constitution, was invalidated by the recent court ruling.

"It's important to . . . overturn the court decision and to reaffirm the voters' will as expressed by the approval of Proposition 22," said Jeff Flint, a spokesman for the measure's supporters.

Opponents of the latest initiative, including state Sen. Sheila Kuehl (D-Santa Monica), said the courts have established that marriage is a right of same-sex couples and that public opinion has changed.

Predicting that the measure will fail, Kuehl said: "I have a very positive feeling about how the people of California will treat this initiative."

Another contentious issue is a proposed amendment to the state Constitution that would prohibit abortions for minors until 48 hours after a physician notifies a minor's parent, legal guardian or, if parental abuse is reported, another adult family member.

The measure would also allow monetary damages to be imposed against physicians who violate the notification rule.

"This is to protect girls for medical reasons. This is a serious medical procedure," said Grace Dulaney, a spokeswoman for Friends of Sarah, a group of the initiative's supporters named after a 15-year-old Texas girl who died from an infection after an abortion.

Opponents predicted that voters would be consistent and reject the proposal as they did similar ones in 2005 and 2006.

"We all support the safety and health of California's young women," said Amy Everitt, state director of NARAL Pro-Choice California. "But this ballot measure will do nothing but threaten our state's most vulnerable teens. . . . Some teens, for whatever reason, can't talk to their parents."

Livestock treatment is the subject of another measure, which would require that an enclosure or tether confining certain farm animals allow them to fully extend their limbs or wings, lie down, stand up and turn around for most of every day.

That initiative is aimed at protecting calves raised for veal, egg-laying hens and pregnant pigs, which proponents said are often inhumanely confined by the food industry.

Californians for Sound Farm Animal Agriculture, a group of egg-producing and farming interests, has formed to defeat the measure.

Three of the November propositions will address crime and criminals.

One would require the state to increase funding and oversight for individualized treatment and rehabilitation programs for nonviolent drug offenders and parolees. It also would reduce sentences for nonviolent drug offenses by mandating probation with treatment and by providing for case dismissal and/or sealing of records after probation.

State Sen. George Runner (R-Lancaster) is a leading proponent of a separate initiative called "The Safe Neighborhoods Act: Protect Crime Victims, Stop Gangs and Thugs." It would require the state to increase spending on programs to combat crime and street gangs.

It also would raise penalties for some crimes, including violations of gang injunctions; use of methamphetamines or possession of them to sell; and the carrying of loaded or concealed firearms by certain felons. And the measure would eliminate bail for illegal immigrants charged with violent or gang-related felonies.

A third proposition, referred to as the "Crime Victims' Bill of Rights Act of 2008: Marsy's Law," would require that crime victims be notified and allowed to have input when defendants and convicts are up for bail, pleas, sentencing or parole. It also would reduce the number of parole hearings to which prisoners are entitled.

Marsy's Law is named after the murdered sister of billionaire Henry T. Nicholas III, a founder of Broadcom Corp., who has donated about $5.8 million to campaigns for that initiative and the Runner proposal.

Nicholas, who pleaded not guilty this month to securities fraud and drug charges, has since resigned as a co-sponsor of the Marsy's Law campaign.

Gov. Arnold Schwarzenegger will not appear on the November ballot, but his presence will be felt. He's the leading supporter of a proposal to create a 14-member commission that would draw new district lines for the state Senate, Assembly and Board of Equalization.

The measure would take the job away from the state Legislature, which has set up districts that tend to protect incumbents. Instead, the state auditor would randomly select people from a voter applicant pool for the panel of five Democrats, five Republicans and four others unaffiliated with either party.

The measure would not change the way congressional districts are drawn. The Legislature would retain that task.

If the measure passes, "the old gerrymandering that protects incumbents and divides minority communities will be a thing of the past," said Kathay Feng, the head of California Common Cause, a sponsor of the initiative.

Democrats dominate the Legislature, and state Democratic Party officials voted to oppose the measure.

There are also two measures on clean energy.

One would require all utilities, including those owned by the government, such as the Los Angeles Department of Water and Power, to generate 20% of their power from renewable energy by 2010. The requirement would be raised to 40% by 2020 and 50% by 2025.

The other would authorize $5 billion in bonds to provide grants from $2,000 to $50,000 to buyers of alternative-fuel vehicles. It would also provide money for research, development and production of renewable energy technology and incentives for research on alternative-fuel vehicles.

Voters will also decide whether the state may borrow $980 million for the expansion, remodeling and equipping of 13 children's hospitals in the state, including five in the UC system.

And they'll vote on a $9.95-billion bond measure to cover most of the state's share of a $33-billion high-speed rail system connecting Anaheim, Los Angeles and the San Francisco Bay Area.

--

patrick.mcgreevy@latimes.com

Times staff writer Nancy Vogel contributed to this report.

--

(BEGIN TEXT OF INFOBOX)

2008 propositions

Voters will decide on at least 11 propositions in November. They are listed in the order they will appear on the ballot:

1: High-speed rail

Borrow $9.95 billion to link Los Angeles and San Francisco.

2: Farm animals

Set minimum pen space for calves, hens, pregnant pigs.

3: Children's hospitals

Borrow $980 million for construction and renovation.

4: Abortion

Notify parents before abortions for minors.

5: Drug offenses

Reduce penalties and expand treatment.

6: Crime

Increase drug-, gang- and firearm-related penalties.

7: Energy

Require utilities to increase renewable energy.

8: Marriage

Ban same-sex marriage.

9: Victims' rights

Increase victim input in justice process.

10: Alternative fuels

Borrow $5 billion to promote cleaner fuels.

11: Redistricting

Independent panel to draw legislative districts.

--

Source: California Secretary of State

EXHIBIT O

Business Wire
A Berkshire Hathaway Company

Crime Victims Advocates and Law Enforcement Leaders Unite in Support of Prop. 9 - Marsy's Law: the Crime Victims' Bill of Rights Act of 2008

September 23, 2008 05:06 PM Eastern Daylight Time

SACRAMENTO, Calif.--(BUSINESS WIRE)--The Yes on Proposition 9 campaign - Marsy's Law: The Crime Victims' Bill of Rights Act of 2008 - announced today a lengthy bipartisan list of supporters including crime victim advocates, district attorneys, sheriffs, police chiefs, labor, and concerned Californians from across the state and nation. Campaign leaders include Harriet Salarno, President of Crime Victims United of California, Statewide Chairman Assemblyman Todd Spitzer, Justice for Homicide Victims Co-Founder Marcella Leach, CEO of Justice for Murdered Children LaWanda Hawkins, Memory of Victims Everywhere Founder Collene Campbell, former Chairman of the California Board of Prison Terms Jim Nielsen and National President of Parents of Murdered Children Dan Levey. Proposition 9 provides crime victims and their families with constitutional rights equal to those of accused and convicted criminals.

"California's constitution guarantees rights for the most heinous of offenders who commit deplorable acts against citizens of this State," Salarno said. "Prop. 9 levels the playing field by guaranteeing rights for crime victims, ending further victimization of innocent people by a system that frequently neglects, ignores and repeatedly punishes them. Furthermore, the provisions specifically related to parole will only affect 10 percent of the prison population - lifers, the most heinous offenders in our prisons."

The Constitution currently provides rights for those accused of committing crime and those convicted of crime but their victims do not have similar protections. Their rights are only "statutory," which means – from a legal and practical perspective – victims' rights are secondary.

"Too often in our criminal justice system, criminals accused and convicted of horrible crimes are provided more rights and respect than the victims of the crime," said Hawkins, a proponent of Prop. 9, who created Justice for Murdered Children after the brutal murder of her son Reggie in 1995. "Crime victims deserve better. They deserve the constitutional rights in Prop. 9," she continued.

Written by crime victims and public safety leaders, Proposition 9 provides victims with rights to justice and due process by creating a constitutional Crime Victims' Bill of Rights that would:

- Require that a victim and their family's safety be considered by judges making bail decisions for accused criminals and that crime victims be notified if their offender is released.
- Require victims be notified of parole hearings in advance to ensure they can attend and have a right to be heard.
- Require that victims be notified and allowed to participate in critical proceedings related to the crime, including bail, plea bargain, sentencing and parole hearings.

- Give victims a constitutional right to prevent release of their personal confidential information or records to criminal defendants.

"Marsy's Law will ensure no other crime victim will have to endure the pain that I have experienced when I came face to face with my daughter's killer at the grocery store when I thought he was behind bars, because it requires victims to be informed at all times during the criminal justice process," said Leach, proponent and mother of murder victim Marsy Nicholas, for whom Prop. 9 is named. "In memory of my daughter and all other crime victims, I look forward to passing the Crime Victims' Bill of Rights Act and finally giving crime victims the rights we deserve."

"Prop. 9 was inspired by hundreds of thousands of crime victims who have experienced the pain and frustration of a criminal justice system that too often fails to afford them even the most basic of rights," Nielsen said. "Our extensive list of supporters sends a clear and undeniable message to Californians that victims' rights must be a priority. I am proud to stand with crime victims, district attorneys, sheriffs, police chiefs and law abiding citizens on behalf of this Initiative."

"Prop. 9 provides victims with rights to justice and due process by creating a constitutional Crime Victims' Bill of Rights and by streamlining the parole system. The initiative also keeps law-abiding Californians safe by preventing politicians from releasing dangerous inmates solely to alleviate prison overcrowding without regard for their likelihood to reoffend," Levey said.

According to the nonpartisan Legislative Analyst's Office (LAO), "under current law, the measure would probably have no fiscal effect on the state prison system." (Analysis - Page 4). However, changes in parole revocation procedures are "likely to be net state savings in the low tens of millions of dollars annually..." (Page 5). Opponents have attempted to mislead voters claiming it increases state spending, primarily because they cannot justify their tragic position in opposition to crime victims, law abiding citizens, public safety leaders and millions of residents who signed petitions placing Prop. 9 on the November ballot.

"We are confident that voters will affirm the will of more than 1.2 million Californians who signed petitions to put Prop. 9 on the ballot. This November, we will give crime victims and their families the respect they deserve from our justice system," Assemblyman Spitzer concluded.

Proposition 9 – Marsy's Law: The Crime Victims' Bill of Rights Act of 2008, provides constitutionally-protected rights for victims in California, ensuring they are treated with fairness and human decency throughout the criminal justice process. Proposition 9 has strong bipartisan support from Crime Victims Advocacy Organizations including Justice for Homicide Victims, Crime Victims United, Parents of Murdered Children, Crime Survivors, Inc. and numerous other organizations, District Attorneys, Sheriffs, Police Chiefs, community organizations and public safety leaders throughout California and the nation.

For a complete list of supporters please contact campaign headquarters (916) 448-5802

Contacts

For Marsy's Law: The Crime Victims'
Bill of Rights Act of 2008
Mitch Zak, 916-448-5802

EXHIBIT P

Prop. 8—Serving Justice or Assaulting It?

By JOHN KENDALL, *Times Staff Writer*

Californians went into the voting booth to slash property taxes in 1978 and to cap government spending in 1979. Now, they are being asked whether the criminal justice system also should be radically reformed by vote.

When they go to the polls on June 8, voters will consider Proposition 8, the simply worded but vastly complicated Gann initiative that calls itself the "Victims' Bill of Rights."

Backers say the initiative would protect victims and public safety by re-balancing the administration of justice, which they claim has been tipped in favor of criminals by the state Supreme Court and the Legislature.

But opponents contend that Proposition 8 is a "massive assault" on the criminal justice system. They say it would cost taxpayers an estimated $1 billion a year, would not protect victims and is unconstitutional in several respects.

The initiative qualified for the ballot with 663,409 signatures collected through the name-gathering expertise of tax and spending reformer Paul Gann, who has spent most of his business life selling real estate and automobiles.

Unsuccessful Candidate

Gann, an unsuccessful Republican U.S. Senate candidate in 1980, co-authored Proposition 13, the celebrated property-tax-cutting measure, in 1978. The next year the 69-year-old Sacramento resident sponsored Proposition 4, a proposal to limit government spending.

Voters approved both initiatives, producing historic tax and spending policy changes, the effects of which still may not have been fully realized in cutbacks in government services.

Proposition 8 is perhaps even more far-reaching in its effect, and it is surely more complex, than either Propositions 4 or 13. If voters approve it, courts can be expected to take years, some say decades, to determine the legal consequences.

In ballot arguments, initiative sponsor Paul Gann (at left) blames "liberal reformers, lenient judges and behavior modification do-gooders who release hardened criminals again and again to victimize the innocent."

Some attorneys lightly refer to the initiative as the "Lawyers Full Employment Act," but one of Proposition 8's aspects may avoid all that legal wrangling. Critics claim that the initiative embraces more than one subject and therefore violates the constitutional requirement that initiatives stick to a single subject. That alone could invalidate it.

Among other things, Proposition 8 would:

—Repeal the pre-trial right to bail now guaranteed by the state Constitution in all but capital cases in which facts are evident or presumption of guilt is great.

—Eliminate exclusionary rules that bar admission at trial of evidence resulting from unlawful searches and seizure, forced confessions, illegal wiretapping and other grounds.

—Ban plea bargaining in 25 crimes listed as "serious felonies" or in cases of driving under the influence of alcohol or drugs, unless there is insufficient evidence to prove the people's case or a material witness is not available.

—Abolish the defense of diminished capacity in the guilt phase of a criminal hearing.

—Permit use in evidence of a witness's prior felony convictions in order to impeach that witness.

—Enhance the sentence of a defendant convicted of a serious felony by five years for each prior conviction on a similar crime, each sentence to run consecutively.

Although Proposition 8 declares in the first of 10 sections that it shall be known as the "Victims' Bill of Rights," actually few of its provisions deal specifically with proclaimed "rights" of victims.

While declaring a victim's "right" to restitution from a convicted defendant, the criminal justice initiative also proclaims the "Right to Safe Schools" for students and staff members and "Right to Truth-in-Evidence" for everyone.

In order "to protect public safety," Proposition 8 connects such proclaimed "rights" with proposed reforms of the way accused people and convicted defendants are treated in the criminal justice system. It amends the state Constitution, adds five sections to the Penal Code and three sections to the Health and Institutions Code and presents the legal package to voters as a single measure.

The criminal justice initiative was drafted by a group of conservative attorneys and legislators, some of whom joined in the formation of the Sacramento-based Citizens Committee to Stop Crime, chaired by Gann.

Gann is recovering from heart surgery and is not expected to participate actively in the campaign, but his message is clear in ballot arguments.

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

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

Gann blames "liberal reformers, lenient judges and behavior modification do-gooders who release hardened criminals again and again to victimize the innocent."

He is joined by Lt. Gov. Mike Curb and Atty. Gen. George Deukmejian, both candidates for the Republican nomination for governor, in ballot arguments favoring Proposition 8.

While the expected rhetorical din over the "Victims' Bill of Rights" has not yet developed, debate has been vigorous among knowledgeable opponents and proponents.

Senior Assistant Atty. Gen. George Nicholson, described by Gann as a chief architect of Proposition 8, declares that the public's "ultimate human right" is government protection from crime and violence.

"This initiative is to undo a good deal of harm that the California Supreme Court has done," said Nicholson, a candidate for the Republican nomination for attorney general. He blamed what he called the court's "hyperactivism" as well as the Assembly Criminal Justice Committee's "neglect."

Strong Statement

"We're going to pay any price, and we're going to bear any burden, fiscal . . . governmental or structural, whether in the public or private sector to say, 'We're not going to tolerate the killing of men, women and children in this society any longer or the invasion of their homes and destruction of their businesses and work places and the ravaging of their schools. We're not going to do it any more,' " Nicholson said.

The philosophical tone of Nicholson's declaration and his willingness to pay a high price has a counterpoint. Brent A. Barnhardt, a Sacramento attorney and American Civil Liberties Union lobbyist, suggests that fear of crime has produced the dynamics of a McCarthy-like era.

"If you are not with them, or disagree with them in any particular, you are therefore soft on crime," Barnhardt said. "You are to be

Please see PROP. 8, Page 22

PROP. 8: Debate

Continued from Third Page

condemned. It's exploitation of public fear and crime.

"There's a reason to be concerned about crime. . . . That's a serious problem, but what we're seeing is an exploitation of that for partisan political gain."

Barnhardt noted that the California District Attorneys Assn. had endorsed Proposition 8 last fall, while at the same time observing that some of its proposals might be constitutionally defective.

"That's part of the climate," he said. "They feel obliged to kowtow to a group of simpletons . . . those people who drafted it. . . . This is a massive assault on our system of justice."

Gerald F. Uelmen, a Loyola Law School professor and former prosecutor, thinks the framers of the "Victims' Bill of Rights" selected "rights" as a buzz word.

Uelmen, a member of the California Attorneys for Criminal Justice, composed mostly of defense attorneys, observed that nearly all of Proposition 8's proposals can be changed only by a two-thirds vote of both houses of the Legislature.

"This damn thing is going to be carved in stone," he said. "There's a lot of sloppy drafting there, and we're going to be stuck with it."

Uelmen declared that the aspect of Proposition 8 he considers "most insidious" is the initiative's attempt to make "too many fundamental changes in one sweep."

Public Fears Noted

He said, "To wrap it up in a single package called the 'Victims' Bill of Rights' is a coldly calculated attempt to cash in on public fear and hysteria (about crime) in order to foist numerous changes which have been rejected by the courts and the Legislature upon an unsuspecting public."

Robert McElreath, executive director of the Citizens Committee to Stop Crime, contends, on the other hand, that if the Assembly Criminal Justice Committee had acted properly Proposition 8 would not be necessary.

"The majority of the Assembly Justice Committee, including its chairman, Assemblyman Terry Goggin (D-San Bernardino), has become the graveyard of crime legislation," McElreath charged.

"I know the other side says it is poorly drafted, but it was drafted the way it was on purpose. Mr. Gann wanted it as simple as possible so the people could understand."

As presented to voters, the "Victims' Bill of Rights" may pass Gann's test for simple wording. But its provisions have evoked exhaustive examination of the complex effects they would have on the criminal justice system.

After examining Proposition 8 last fall, the Appellate Division of the Los Angeles County district attorney's office, commenting independently of the district attorney, concluded:

Please see PROP. 8, Page 24

PROP. 8: Debate Growing Over Initiative

Continued from 22nd Page

"The Gann initiative poses numerous constitutional as well as administrative problems. Indeed, the initiative may violate the single-subject rule, which would mean that it would be of no effect in its entirety even if it were adopted by voters." (The "single-subject rule" is the state constitutional provision requiring initiatives to adhere to a single subject.)

In another analysis issued last month, the Assembly Criminal Justice Committee's staff said:

"Unconstitutional, misdrafted and vaguely worded provisions are scattered throughout the initiative. Thus, the actual effect of the measure may be far from its original intent."

Proposition 8's backers insist that the initiative meets the single-subject test of the state Constitution because all of its provisions relate to administering criminal justice to restore public safety. Opponents disagree.

When the California Supreme Court considered a legal challenge to Proposition 8 and permitted it on the ballot earlier this year, Chief Justice Rose Elizabeth Bird and Justice Stanley Mosk held that the initiative violates the single-subject rule, but the majority of the court deferred a decision on that issue until after the election.

If Proposition 8 is approved June 8, its constitutionality is certain to be challenged by opponents on the single-subject issue and possible on other grounds of claimed constitutional defect.

Here are the initiative's major provisions and digested summaries of what analysts suggest their effect will be:

RESTITUTION

The proposition declares that all people who suffer losses as a result of criminal activity "shall have the right to restitution from the persons convicted of the crimes for losses they suffer."

Under its terms, the court must order restitution in all cases resulting in convictions, except for "extraordinary or compelling reasons," which the initiative does not define.

Courts already may order restitution in criminal cases —and often do —but only as part of the rehabilitative process for the convicted person. At present, an injured victim also may seek restitution through civil action.

By requiring courts to order convicted defendants to make restitution in all criminal cases, analysts suggest that Proposition 8 risks the denial of due process because convicted defendants would not have a chance to make appropriate motions and challenge the damage award.

The analysts point out that if courts afford convicted people due process regarding restitution, it may require time-consuming hearings, a costly procedure.

RIGHT TO SAFE SCHOOLS

Under this provision, Proposition 8 decrees that students and staff members of public primary, elementary and junior and senior high schools have the "inalienable right to attend campuses which are safe, secure and peaceful."

Since California's Constitution provides that the general public has a right to "safety," analysts ask if the safe-schools provision creates a superior right entitling students and staff to greater protection than others.

They note that the initiative does not define what is meant by a "safe school." Thus, a student might refuse to attend a school that he or she considers unsafe, thereby negating the state's compulsory education law.

Analysts also wonder if a student involved in a school fight, for example, could sue the school district for damages for violation of the "inalienable right" to safety. Or whether school officials would be required to redirect funds from the instruction program to hire guards for school campuses.

RIGHT TO TRUTH-IN-EVIDENCE

Under terms of this provision, all relevant evidence, with a few listed exceptions, would be admissible in any criminal proceeding. Only a two-thirds vote by both houses of the Legislature could make further exceptions.

Of all of Proposition 8's provisions, analysts say this attempt to abolish "exclusionary rules" adopted by the California Supreme Court on grounds independent of federal law may have the greatest legal effect on California's system of criminal justice.

If adopted, the examiners say, the all-relevant-evidence provision would overturn "at least 50" high court rulings of the last 25 years. Proposition 8 would abolish such exclusionary rules in the Evidence Code as:

The best-evidence rule; the requirement that a document used in evidence must be authenticated; the limits on admission of opinion evidence; the rule that prohibits an attack on a witness's credibility by presenting evidence of his or her religious beliefs or lack of beliefs; the rule that a rape victim need not give her address and telephone number in open court and rules barring the introduction of evidence gained by unauthorized wiretaps, illegal searches and seizures and forced confessions.

Since the U.S. Supreme Court has interpreted the Constitution to bar evidence obtained by illegal search and seizure or by forced confession, analysts conclude that the provision on the "Right to Truth-in-Evidence" is unconstitutional on its face.

And, they say, if the provision on "all relevant evidence" meant to apply only to exclusionary rules on state grounds that go beyond federal rules, then it still poses constitutional problems.

For example, the district attorney's appellate division suggests that if character evidence is used in attempt to prove that a defendants has a disposition to commit the crime charged, it may be a violation of the convicted person's due process rights to be tried on the facts of the violation with which he is charged, not his character.

PUBLIC SAFETY BAIL

This provision of the "Victims' Bill of Rights" repeals the "right to pretrial bail now guaranteed by California's Constitution in all but capital cases in which the facts are evident or the presumption of guilt is great.

Proposition 8 provides that bail is discretionary based on a court's estimate of the threat the accused person may pose to public safety.

By denying pretrial bail as a guaranteed right, ana-

Please see PROP. 8, Page 25

PROP. 8: Debate

Continued from 24th Page

lysts say, the Gann initiative alters the fundamental presumption in the U.S. system of justice that the accused is presumed innocent until proved guilty.

Analysts suggest that the fiscal effect of requiring bail hearings in all cases—even misdemeanors—would be enormous, and that by putting more accused people behind bars city and county jails would become even more overcrowded than they are now.

It is suggested that Proposition 8's public safety bail provision is a form of preventive detention without due process for the accused and therefore may be constitutionally defective.

DIMINISHED CAPACITY: INSANITY

Under this provision, the defense of diminished capacity is abolished in the guilt phase of a criminal hearing, and a new, harsher test for insanity defense is proposed.

Proposition 8 abolishes the insanity test adopted by the California Supreme Court in 1978, when it dropped a 19th-Century insanity rule that had been maintained by California courts for a century.

Under the present American Law Institute's test, adopted four years ago in California, a person is legally insane if at the time of the crime he or she lacked the capacity to understand the quality of the criminal act or to distinguish right from wrong.

Proposition 8 defines legal insanity to mean that a defendant is both incapable of knowing or understanding the nature and quality of a criminal act and of distinguishing right from wrong at the time of the offense.

The Assembly Criminal Justice Committee's analysis suggests that the "Victims' Bill of Rights" proposes an insanity rule that is closer to the "wild beast" test of the early 19th Century: Did the accused behave like a wild beast?

LIMITATION OF PLEA BARGAINING

This provision adds a Penal Code section that would prohibit plea bargaining in cases involving 25 crimes listed as "serious" felonies, unless the prosecution has insufficient evidence to prove the people's case or a material witness cannot be obtained.

Analysts concluded that this provision "contains numerous ambiguities" and ask what standard the court should use to determine whether the evidence is insufficient to prove the people's case.

To answer the question, they wonder if a court must, in effect, hold a mini-hearing before a criminal trial to determine whether there is proper grounds for a plea bargain.

And, they ask, if a prosecutor can only offer a plea bargain when the people's case is weak, why should a defendant bargain? Why not go to trial?

The predicted result, according to analysts, is that many more defendants can be expected to demand trials, requiring more judges, prosecutors, defense attorneys and jurors—and the attendant expense to taxpayers.

EXHIBIT Q

By Sara Terry Staff correspondent of The Christian Science Monitor
The Christian Science Monitor (1908-Current file); Jun 7, 1982;
ProQuest Historical Newspapers: The Christian Science Monitor
pg. 16

California's Proposition 8: voter rebellion against crime

Measure would alter rules of evidence, guidelines for setting bail, plea bargaining

By Sara Terry
Staff correspondent of
The Christian Science Monitor

Los Angeles

Californians are taking the fight against crime to the ballot box.

Among the dozen or so propositions to be presented to voters here on June 8 is the so-called Victim's Bill of Rights. It is a multi-faceted crime package that proponents say will tip the scales of justice back to public safety and victims' rights.

To opponents, however, Propositon 8 is "a document more politically appealing than legally sound," in the words of Yolo County District Attorney Rick Gilbert.

The measure is simply worded, but enormously complex. It cuts across the criminal justice spectrum – sloppily, say critics – proposing changes in everything from plea bargaining and restitution to the exclusionary rule and safety in the schools. For example:

● **The exclusionary rule.** Under a provision entitled "right to truth-in-evidence," Proposition 8, if passed, would allow all relevant evidence – regardless of how it was gathered – to be introduced in court. Proponents say this clause is meant only to bring California's liberal exclusionary laws into conformity with narrower federal rulings.

But critics say not only does it defy federal rulings, it also abolishes the state's Evidence Code. The current code includes exclusionary rules stating that documents used as evidence must be authenticated and that rape victims do not need to give their addresses and telephone numbers in open court.

● **Right to safe schools.** Proposition 8 states that students and staff members of public schools have the "inalienable right to attend campuses which are safe, secure, and peaceful."

Supporters say the clause is intended to provide a legal underpinning for parents, students, and school employees to sue a school district if a campus is unsafe. Critics charge that the wording is too vague to be meaningful, and suggest that students involved in school fistfights could sue a school district for violation of their "inalienable right" to safety.

● **Bail.** Proposition 8 establishes public safety as the primary consideration in setting bail. It makes bail discretionary – except in capital cases, where bail would be prohibited – and requires judges to consider public safety first in deciding whether to grant bail.

Critics say this part of the proposition could violate an individual's constitutional presumption of innocence. And they warn that the financial burden of requiring bail hearings in all cases – even misdemeanors – could be staggering.

Proposition 8 landed on the ballot after 665,000 signatures were gathered as part of an initiative drive to bring the measure before voters. Advocates contend that the controversial proposal – which is expected to pass by a wide margin and which is sure to be challenged in court – is the only way to correct what they say has been the state Legislature's indifference toward crime problems and liberal court attitudes toward the rights of defendants.

"This is the first big step toward doing something about the problem," says Robert McElreath, executive director of the Citizens Committee to Stop Crime. "We're not being vindictive, we're not taking advantage of people's fears. . . . People are fed up. We're tired of being prisoners in our own homes."

Opponents argue, however, that Prop 8 supporters are taking advantage of Californians' widespread fear and frustration over crime problems – and that the measure's title plays to that concern. What proponents don't say, they charge, is that the bill will cost taxpayers some $1 billion a year in increased court costs and backlogs, that it won't protect victims, that it hampers law enforcement, and that it is unconstitutional on several counts.

"This is indeed a reflection of public frustration," admits Ross Clark, consultant to the state Assembly Criminal Justice Committee. "On the other hand, it's a cynical attempt to capitalize on that frustration by proposing something that sounds good, but won't do anything about the problem," he adds.

In addition, contends Yolo County District Attorney Gilbert, Prop 8 advocates play on the public's fear of crime without mentioning that California has experienced a drop in the increase of its crime rate. Last year, he notes, the state's overall increase in crime was 1.3 percent, compared with 14.3 percent the year before. Crimes against persons, he continues,

'We're not being vindictive, ... People are fed up. We're tired of being prisoners in our own homes.'

actually dropped 0.8 percent. What is more, Gilbert and others point out, California's per capita incarceration rate is exceeded by only two jurisdictions in the world – South Africa and the Soviet Union.

The current debate is set against a year-old political tug of war that has found Republicans and Democrats trying to outdo each other in appearing as anticrime champions. State Republican leaders first unveiled the Victims' Bill of Rights last year, with the support of grass-roots crusader Paul Gann (co-author of California's legendary Proposition 13). The action was a warning to Democrats that if certain anticrime measures were not passed in the state Legislature, the initiative drive would be launched, a step they took last July.

Although the Democratic-controlled Legislature took action on some of the measures raised by Republicans – among them the "diminished capacity" insanity defense – Prop. 8 advocates say it was too little too late.

EXHIBIT R

A 'Victims' Bill of Rights'

For two decades the public has watched crime rates rise at the same time that courts have expanded the rights of defendants. Some people argue that cause and effect is at work: criminals flourish because judges coddle them. This week California voters have the chance to support this popular, though debatable, theory: Proposition 8, a state initiative, pledges to erase many of the legal rules that supposedly have handcuffed police and prosecutors. But, in an irony that is not lost even on the proposal's backers, if Proposition 8 passes—as the polls suggest it will—the only guaranteed result is that the much-loathed courts will be reviewing it for perhaps another decade.

Proposition 8 is the most far-reaching revision of a state's criminal procedures attempted in recent years. Much of the impetus comes from Paul Gann, who, along with Howard Jarvis, promoted California's famous tax-cutting Proposition 13. This time Gann has tossed together a collection of law-and-order ideas that he has attractively, if erroneously, packaged as a "Victims' Bill of Rights." The provisions read more like a counter-Constitution. The right to bail would be revoked. Illegally seized evidence would be admissible in court. Prosecutors would be able to inform juries about the prior criminal records of defendants. Felons would have to pay restitution to their victims.

Threat: Gann is quite open about building on public fears. "The government is not protecting the people," he says. It is "turning vicious criminals loose every day." One of Gann's best examples involves Harvey Lee Heishman III, who raped Nancy Lugassy, an Oakland woman, three years ago. As he left, Heishman warned her not to go to the police. She did, and they arrested him. After he posted a $1,500 bond, Heishman tracked down Lugassy and killed her. Under current California law, a judge who sets bail may consider only the likelihood that the defendant will show up for trial. Under Proposition 8 he would have to weigh the threat to society of someone like Heishman (he had spent six years in prison for three previous rapes) and then put his reasons for granting bail on the public record.

The proposition's opponents admit that rape-murder cases are compelling arguments for reform. But they insist that the initiative will not cure the problems. Not only does the bail-reform clause appear to contradict the U.S. Constitution's ban on excessive bail, they say, but its language is so clumsily drafted that it would mean that even traffic violators could be held without bail. It would have other unintended results. One clause called "truth in evidence" would require the admission of "all relevant evidence" in a courtroom, no matter what its source. This was designed to help police get around the "exclusionary rule," which bars improperly obtained evidence such as conversations from an illegal wiretap. But the clause would also countermand laws that protect rape victims from having to divulge their addresses and phone numbers at trials; defense lawyers could argue that this was relevant to their case. Says Stanford law Prof. John Kaplan: "Prop 8 comes in with a blunderbuss."

Appeals: The proposal has made for some odd ideological contortions. Although most supporters tend to favor states' rights, the undisguised aim of Prop 8 is to strip away power from the California Supreme Court, effectively leaving it to Federal judges. For nearly a decade the state court has based its mainly liberal rulings on the state constitution. Such decisions may not be reviewed by the U.S. Supreme Court, which has tended toward a more conservative view of the law. If Prop 8 passes, however, it will become part of the state constitution, and any appeals against it will have to be based on the U.S. Constitution, to be ultimately decided by the U.S. Supreme Court.

There is little reason to believe that Prop 8 would make much difference in the streets. For all the notorious cases, relatively few felons actually walk free because of legal technicalities. The California State Legislature has already toughened sentencing laws and the prison population stands at a record 28,000 inmates—hardly evidence of leniency. Prop 8, moreover, makes no provisions for more police, prosecutors or jail cells. Everyone wants to "do something" about crime. But finding something that is both constitutional and effective isn't as easy as making a proposition.

ARIC PRESS with JOE CONTRERAS in Los Angeles

San Quentin: Should the voters rewrite the law?

James D. Wilson—Newsweek

The Court's Ruling On Auto Searches

The Fourth Amendment bars police from searching persons and property without a warrant. When the Founding Fathers drafted that seemingly clear provision, they obviously didn't have the automobile in mind: by the time a policeman gets a warrant for a suspicious car, it may have been driven away. So in 1925 the U.S. Supreme Court invented the "automobile exception" to the Fourth Amendment, allowing police to stop and inspect a car when they have "probable cause" to believe that it contains contraband. But that rule has proved to be murky as well. Can the police look inside the trunk and glove compartment? Can they open up a suitcase or peek inside a package? Last July an exasperated Justice Lewis Powell surveyed the judicial hair-splitting on these questions and branded the rules "intolerably confusing" for the nation's police.

Last week the Court used the case of Albert (Bandit) Ross to reduce the confusion. In November 1978 District of Columbia police received a tip that Ross was selling drugs out of his car. Cruising officers soon spotted him, stopped his car and unlocked the trunk. Inside was an unsealed brown paper bag. The cops opened it and found 30 envelopes of heroin. Ross challenged the search, since if the drug evidence could be suppressed, the case against him would collapse. Writing for a 6-3 majority, Justice John Paul Stevens approved the bag opening and then set out a new general rule: whenever police have probable cause to stop a car they may inspect all containers that "may conceal the object of the search." Justice Thurgood Marshall forcefully dissented, arguing that in Ross's case the cops should have seized the bag and asked a judge for permission to look inside. "Efficiency . . . can never be substituted for due process," he wrote. "Is not a dictatorship the more 'efficient' form of government?"

EXHIBIT S

If Passed, Prop. 8 Likely to End Up in the Courts: PROP. 8: Legal Questions
Hager, Philip
Los Angeles Times (1923-1995); May 24, 1982; ProQuest Historical Newspapers: Los Angeles Times
pg. B3

If Passed, Prop. 8 Likely to End Up in the Courts

By PHILIP HAGER,
Times Staff Writer

SAN FRANCISCO—Proposition 8, the sweeping anticrime initiative on the June 8 ballot, may be approved handily by the voters, as its proponents predict.

But there is considerable doubt among California legal authorities that the so-called "victims' bill of rights" will ever become a lasting part of state law. They say that the courts, rightly or wrongly, will very likely rule much or all of it unconstitutional.

If enacted, the controversial measure faces an exhaustive series of legal challenges. Even though Proposition 8 would amend the state Constitution, it could still be thrown out if it were found to violate the federal Constitution or other parts of the state Constitution.

Raises 'Grave Questions'

Its critics predict that it will not survive intact. Analyses by the state Senate Judiciary Committee, the Assembly Criminal Justice Committee, the Los Angeles and San Francisco Bar associations and the Los Angeles district attorney's office, among others, have pointed to several potential constitutional defects in the measure.

"There are many provisions of Proposition 8 that raise very grave constitutional questions," said Shirley Hufstedler, a former federal appellate judge and now a visiting professor of law at Stanford University. "It's a miserably drafted measure."

PROP. 8

This initiative to amend the state Constitution proposes sweeping change and, if passed, would affect bail, limit plea bargaining, require restitution by criminals and alter rules covering admission of evidence.

Its supporters defend the initiative's legality, refusing to agree that it would be struck down in court. They recite the maxim that judges too read the election returns and they say the courts would be quite reluctant to invalidate any measure popular with the voters.

"We believe Proposition 8 is going to be passed by the highest majority and will signal the courts that this is what the people want," said Robert McElreath, executive director of the Citizens Committee to Stop Crime, the group led by tax crusader Paul Gann that is sponsoring the measure. "I think the courts will have to follow the people."

Proposition 8 covers a series of criminal justice issues, ranging in diversity from the law on criminal insanity to safety in the public schools.

Among other things, it would require restitution by criminals to their victims, abolish the right to bail, limit plea bargaining between prosecutors and defendants, and substantially alter the law of search and seizure by eliminating the exclusionary rule—the prohibition against the use in court of improperly seized evidence. A "right" to attend "safe, secure and peaceful" schools also could be established.

In the view of critics, these provisions are most vulnerable to constitutional attack:

—Truth in evidence. By stating that "relevant evidence shall not be excluded in any criminal proceeding," the initiative would wipe out the exclusionary rule as it has been applied for decades in California. Backers insist that the provision is aimed at the state Supreme Court's expansive application of the rule, not the more limited rulings by the U.S. Supreme Court, but the initiative does not specifically say that. Critics say the measure would permit the introduction of evidence *from unlawful searches and surveillance* in violation of the Fourth Amendment of the U.S. Constitution.

—Bail. By abolishing a defendant's right to bail in non-capital cases, the measure could be held in violation of the inherent constitutional presumption of innocence and the Eighth Amendment's guarantees against "excessive bail." The initiative would make bail discretionary and would require judges to consider "public safety" first in deciding whether to grant bail. In capital cases, bail no longer would be discretionary but would be prohibited. Critics say that may be unconstitutional because it denies judges the discretion to consider the full circumstances of a case.

—Prior Convictions. By requiring that juries be informed of a witness's prior convictions to impeach that witness's testimony, and that a defendant's prior convictions be considered in passing sentence, the measure could be attacked as violating the defendant's Sixth Amendment right to a fair trial. Currently, a witness's credibility can be challenged by introducing evidence of his prior convictions, but such evidence can be barred if a judge finds its value outweighed by the prejudicial effect it would have on the jury. Similarly, prior convictions may be used to enhance a convicted defendant's sentence, but such use is subject to limitations. For example, convictions dating back more than 10 years may not be used.

—Diminished Capacity. By abolishing the defense of diminished capacity, critics contend that the measure could prevent a defendant from introducing evidence of intoxication, trauma, mental illness or defect in an effort to prove that he lacked intent to commit a crime. This could be argued as violating his right to fair trial. Last year, the Legislature acted to abolish the diminished capacity defense—but the terms of the bill left the way clear

Please see PROP. 8, Page 19

PROP. 8: Legal Questions

Continued from Third Page

for defendants to offer some kinds of mental evidence that the initiative appears to prohibit.

—Restitution. By forcing restitution from criminals to victims, unless there are "compelling or extraordinary circumstances," the initiative could collide with a defendant's civil due process rights—if he were not given a full and open hearing, the opportunity to present evidence and witnesses, and, perhaps, the right to a jury trial on the separate issue of restitution.

Beyond the question of the constitutionality of Proposition 8, there is the prospect of years of litigation necessary to interpret the measure's general and undefined provisions—such as the "right to safe schools"—in the view of analysts.

"There has never before been such a wholesale and massive change proposed for the criminal law," observed Geoffrey A. Goodman, a one-time Los Angeles prosecutor who is consultant to the Assembly Criminal Justice Committee. "And never has there been such a sloppily and loosely worded proposition on the ballot."

But protracted litigation may be unnecessary if, as probable, the whole measure is challenged first as a violation of the state constitutional requirement that initiatives be limited to a "single subject."

Last March, opponents sought to keep Proposition 8 off the ballot on those grounds, among others. By a bare 4-3 majority, the state Supreme Court refused to do so. But two dissenting court members—Chief Justice Rose Elizabeth Bird and Justice Stanley Mosk—said they believed that the measure did violate the single-subject rule. And Justice Allen E. Broussard, voting with the majority, said he did so on the understanding that the ruling "in no way precludes" review of the initiative's constitutionality if and when it is passed by voters.

The timing of such a challenge could put the court in an uncomfortable political position, should the justices be asked to consider it before the November election, when four justices will be on the ballot for voter approval or disapproval.

Opponent Confident

Emphraim Margolin, the San Francisco attorney who led the first challenge to the initiative in March, refuses to speculate about the timing of a subsequent attack on the measure. But he is confident of eventually defeating the initiative.

On the other side, McElreath acknowledges the likelihood of an attack on Proposition 8 but maintains that it could survive because a court could find that it involves just one subject—"criminal justice." He points out that other complex initiatives have withstood similar legal attack in the past.

Should it clear the single-subject hurdle, the proposition then would face constitutional challenges to most, if not all, of its most sweeping provisions. The measure does contain a "severability clause," stating that should one provision be struck down, the rest of the initiative would remain intact. But in the interim, a cloud of doubt would hang over the initiative, with judges and lawyers being forced to try to anticipate eventual court rulings on the measure.

In any event, many authorities are betting that the proposition will fall before the state Supreme Court—some of whose members have already expressed doubt about the initiative's constitutionality—no matter how big a vote it receives in the election.

"Of all the things the state Supreme Court has been accused of, an unwillingness to stand up to public opinion is the last thing," said a frequent court critic, law Prof. Phillip Johnson of the University of California, Berkeley. "On the contrary, the justices have shown a ready willingness to stand up for what they think is right, despite public criticism."

McElreath maintains that the courts could—and would—uphold Proposition 8 because it could—and should—be interpreted as being consistent with the federal Constitution and rulings by the U.S. Supreme Court. "Nothing we can do in the initiative process may supersede the law of the United States," he said. "We can't take away the Bill of Rights—and we aren't attempting to."

EXHIBIT T

DECLARATION OF NATASHA MINSKER

I, NATASHA MINSKER, declare as follows:

1. I am attorney licensed to practice in the state of California. I am also the director of the American Civil Liberties Union ("ACLU") of California Center for Advocacy and Policy, located in Sacramento, California.

2. On January 4, 2018 I emailed Douglas Woods, an employee of the California Attorney General's Office ("Attorney General"), asking whether the Attorney General had copies of inactive ballot measures prior to 2010. The measures were not otherwise publicly available on the Attorney General's website, because the website only publishes inactive measures from 2010 onwards. I told Mr. Woods that I was looking for earlier versions of Proposition 9 from 2008, known as Marsy's Law. A true and correct copy of this email is included as Attachment 1 to this Declaration.

3. Mr. Woods referred my request to Connie LeLouis, Supervising Deputy Attorney General, who in turn forwarded the request to Ashley Johansson, also an employee in the Attorney General's office, who responded to my request in an email dated January 8, 2018, sent at 3:33pm (the "3:33pm Email"). A true and correct copy of this email is included as Attachment 2 to this Declaration.

4. The 3:33pm Email stated that "Initiative 07-0100 was the

measure that qualified and became Prop. 9." The email then stated that the "additional Marsy's Law measures submitted that year" were: 1) "07-0096, The Victim's Rights and Protection Act: Marsy's Law - Version 3"; 2) "07-0095, The Victim's Rights and Protection Act: Marsy's Law - Version 2"; and 3) "07-0088, The Victim's Rights Act of 2008: Marsy's Law. [V1]." The 3:33pm Email attached initiative 07-0096 and stated that the additional attachments would be sent under separate cover due to size.

5. The document attached to the 3:33pm Email consisted of 1) a cover letter dated December 7, 2007, sent from initiative 07-0096's proponent, Steven J. Ipsen, to the Attorney General's Initiative Coordinator Krystal Paris, which stated: "Please find enclosed a copy of "'The Victim's Rights and Protection Act: Marsy's Law – Version 3', a proposed statewide ballot initiative for the November 8, 2008 election," which was stamped received by the Attorney General's office on December 7, 2007; and 2) an attachment to that letter which contained the proposed text of initiative 07-0096. An excerpt of the true and correct copy of this document, which includes the cover letter and pages 1 to 7 of the text of initiative 07-0096, is attached to *Amici's* Request for Judicial Notice, dated October 9, 2018 ("RJN") as Exhibit A.

6. Ms. Johansson sent a second email to me on January 8, 2018 at 3:34pm (the "3:34pm Email"), which stated that the email was attaching "the text for 07-0095." A true and correct copy of the 3:34pm Email is

included as Attachment 3 to this Declaration.

7. The document attached to the 3:34pm Email consisted of 1) a cover letter dated December 7, 2008 [this appears to be typo and should be 2007], sent from initiative 07-0095's proponent, Steven J. Ipsen, to the Attorney General's Initiative Coordinator Krystal Paris, which stated: "Please find enclosed a copy of "'The Victim's Rights and Protection Act: Marsy's Law – Version 2', a proposed statewide ballot initiative for the November 8, 2008 election," which was stamped received by the Attorney General's office on December 7, 2007; and 2) an attachment to that letter which contained the proposed text of initiative 07-0095. An excerpt of the true and correct copy of this document, which includes the cover letter and pages 1 to 7 of the text of initiative 07-0095, is attached to the RJN as Exhibit B.

8. Ms. Johansson sent a third email to me on January 8, 2018 at 3:35pm (the "3:35pm Email"), which stated that the email was attaching "the text for 07-0088." A true and correct copy of the 3:35pm Email is included as Attachment 4 to this Declaration.

9. The document attached to the 3:35pm Email consisted of 1) a cover letter dated December 5, 2007, sent from initiative 07-0088's proponent, Steve Ipsen, to the Attorney General's Initiative Coordinator Krystal Paris, which stated that the proponent was submitting amendments to its originally-submitted initiative assigned number 07-0088 and had

renamed the initiative the "Victims Rights and Protection Act: Marsy's Law," which was stamped received by the Attorney General's office on December 5, 2007, with the notation that it was initiative 07-0088 Amdt. #2S; and 2) an attachment to that letter which contained the proposed text of initiative 07-0088 Amdt. #2S. An excerpt of the true and correct copy of this document, which includes the cover letter and pages 1 to 7 of the text of initiative 07-0088 Amdt. #2S, is attached to the RJN as Exhibit C.

10. On February 20, 2018, Emily Gargiulo, an employee at the Attorney General's office sent me an email ("February 20 Email") containing an attachment for an additional prior version of Marsy's Law, initiative 07-0097 Amdt. 3S. A true and correct copy of that email is included as Attachment 5 to this Declaration.

11. The document attached to the February 20 Email consisted of 1) a cover letter dated December 24, 2007, sent from initiative 07-0097's proponent, Steven J. Ipsen, to the Attorney General's Initiative Coordinator Krystal Paris, which stated that the proponent was submitting amendments to its originally-submitted initiative assigned number 07-0097, which it named "The Victims Rights and Protection Act of 2008: Implementation and Enforcement Tools for Victims, Prosecutors, and Judges," which was stamped received by the Attorney General's office on December 24, 2007, with the notation that it was initiative 07-0097 Amdt. #3S; and 2) an attachment to that letter which contained the proposed text of initiative 07-

0097 Amdt. #3S. An excerpt of the true and correct copy of this document, which includes the cover letter and pages 1 to 7 of the text of initiative 07-0097 Amdt. #3S, is attached to the RJN as Exhibit D.

12. On March 1, 2018 I emailed Ms. Gargiulo at the Attorney General's office and asked if the office had copies of the notices of withdrawal for the four prior versions of Marsy's Law that had been submitted to the Attorney General's office, but had not qualified. A true and correct copy of this email is included as Attachment 6 to this Declaration.

13. That same day, on March 1, 2018, Ms. Gargiulo responded to my email, and attached the "notices of failure" sent by the California Secretary of State to the County Clerks/Registrars of Voters and Proponent for the four prior versions of Marsy's Law: 07-0088, 07-0095, 07-0096, 07-0097. A true and correct copy of that email is included as Attachment 7 to this Declaration.

14. Each of the four "notices of failure" is dated July 23, 2008 and was sent from the Secretary of State to the County Clerks/Registrars of Voters and Proponent. Each of the notices states: "Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the ... constitutional amendment and statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore the petition has

failed." In the top right corner of each notice there is a hand-written notation listing the Attorney General's assigned initiative number, which notations were included in the version of the notices I received from Ms. Gargiulo. The four notices contain the notations 07-0088, 07-0095, 07-0096, 07-0097, respectively, in the top right corner. These numbers correspond with the prior versions of the initiative that I had received from Ms. Johannson.

15. A true and correct copy of the notice of failure for initiative 07-0088 is attached to the RJN as Exhibit E. A true and correct copy of the notice of failure for initiative 07-0095 is attached to the RJN as Exhibit F. A true and correct copy of the notice of failure for initiative 07-0096 is attached to the RJN as Exhibit G. A true and correct copy of the notice of failure for initiative 07-0097 is attached to the RJN as Exhibit H.

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

Executed this 5th day of October 2018 in Sacramento, California.

Natasha Minsker

ATTACHMENT 1

Natasha Minsker

From: Natasha Minsker
Sent: Thursday, January 4, 2018 10:31 AM
To: Douglas Woods
Subject: inactive measures prior to 2010

Hello Doug,

Happy new year and I hope you are well. We haven't talked in a long time so I'm not even sure if you are still working on ballot measures. I am wondering if the AG has copies of inactive measures prior to 2010? The website archive starts in that year. I am looking for earlier versions of Prop 9 from 2008, Mary's Law.

Thanks,

Natasha Minsker
Director, ACLU of CA Center for Advocacy & Policy
916-442-1036 ext 603

ATTACHMENT 2

Natasha Minsker

From: Ashley Johansson <Ashley.Johansson@doj.ca.gov>
Sent: Monday, January 8, 2018 3:33 PM
To: Natasha Minsker
Subject: RE: inactive measures prior to 2010
Attachments: 07-0096 Initiative.pdf

Hi Natasha,

Initiative 07-0100 was the measure that qualified and became Prop. 9. Below are additional Marsy's Law measures submitted that year.

07-0096, The Victim's Rights and Protection Act: Marsy's Law - Version 3
07-0095, The Victim's Rights and Protection Act: Marsy's Law - Version 2
07-0088, The Victim's Rights Act of 2008: Marsy's Law. [V1]

The files are rather large, so I will have to send you the additional attachments in separate emails.

Please let me know if you need anything else.

Thanks,

Ashley

From: Connie LeLouis
Sent: Thursday, January 04, 2018 2:00 PM
To: Natasha Minsker <nminsker@acluca.org>
Cc: Ashley Johansson <Ashley.Johansson@doj.ca.gov>
Subject: Re: inactive measures prior to 2010

Ashley, can you please locate these documents for Natasha? Thank you.

-Connie

On Jan 4, 2018, at 10:40 AM, Natasha Minsker <nminsker@acluca.org> wrote:

> Thank you Doug – moving you to b'cc.
>
> Hello Connie and Thomas,
>
> Happy new year to you both. I may be wrong, but I think that earlier versions of Mary's Law were filed in 2017. If so, I would love to get copies.
>
> Thanks,
>
> Natasha
>
> **From:** Douglas Woods [mailto:Douglas.Woods@doj.ca.gov]
> **Sent:** Thursday, January 4, 2018 10:37 AM
> **To:** Natasha Minsker <nminsker@acluca.org>

Cc: Connie LeLouis <Connie.LeLouis@doj.ca.gov>; Thomas Patterson <Thomas.Patterson@doj.ca.gov>
Subject: RE: inactive measures prior to 2010

Hi Natasha, no, I have changed sections. But Connie and Thomas, copied here, should be able to pull those together for you.

Happy new year to you too,

Doug

From: Natasha Minsker [mailto:nminsker@acluca.org]
Sent: Thursday, January 04, 2018 10:31 AM
To: Douglas Woods <Douglas.Woods@doj.ca.gov>
Subject: inactive measures prior to 2010

Hello Doug,

Happy new year and I hope you are well. We haven't talked in a long time so I'm not even sure if you are still working on ballot measures. I am wondering if the AG has copies of inactive measures prior to 2010? The website archive starts in that year. I am looking for earlier versions of Prop 9 from 2008, Mary's Law.

Thanks,

Natasha Minsker
Director, ACLU of CA Center for Advocacy & Policy
916-442-1036 ext 603

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit http://www.mimecast.com

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

ATTACHMENT 3

Natasha Minsker

From: Ashley Johansson <AshleyJohansson@doj.ca.gov>
Sent: Monday, January 8, 2018 3:34 PM
To: Natasha Minsker
Subject: RE: inactive measures prior to 2010
Attachments: 07-0095 Initiative.pdf

Email two of three. Here is the text for 07-0095.

ATTACHMENT 4

Natasha Minsker

From: Ashley Johansson <Ashley.Johansson@doj.ca.gov>
Sent: Monday, January 8, 2018 3:35 PM
To: Natasha Minsker
Subject: RE: inactive measures prior to 2010
Attachments: 07-0088 Amdt 2S.pdf

Email three of three. Here is the text for 07-0088.

ATTACHMENT 5

Natasha Minsker

From: Emily Gargiulo <Emily.Gargiulo@doj.ca.gov>
Sent: Tuesday, February 20, 2018 12:17 PM
To: Natasha Minsker
Cc: Connie LeLouis
Subject: RE: inactive measures prior to 2010
Attachments: 07-0097 Amdt 3S.pdf

Natasha,

The initiative is attached.

Thanks,
Emily

ATTACHMENT 6

Natasha Minsker

From: Natasha Minsker
Sent: Thursday, March 1, 2018 4:42 PM
To: 'Emily Gargiulo'
Cc: Connie LeLouis
Subject: RE: inactive measures prior to 2010

Hello Emily,

Do you have notices of withdrawl for these initiatives?

A.G. File No. 07-0097, Amdt. #3-S
07-0096, The Victim's Rights and Protection Act: Marsy's Law - Version 3
07-0095, The Victim's Rights and Protection Act: Marsy's Law - Version 2
07-0088, The Victim's Rights Act of 2008: Marsy's Law. [V1]

Thanks,

Natasha

ATTACHMENT 7

Natasha Minsker

From: Emily Gargiulo <Emily.Gargiulo@doj.ca.gov>
Sent: Thursday, March 1, 2018 4:48 PM
To: Natasha Minsker
Cc: Connie LeLouis
Subject: RE: inactive measures prior to 2010
Attachments: 07-0088 Notice of Failure.pdf; 07-0095 Notice of Failure.pdf; 07-0096 Notice of Failure.pdf; 07-0097 Notice of Failure.pdf

Hi Natasha,

The notices of failure are attached.

Thanks,
Emily

Emily Gargiulo
Analyst
California Department of Justice
Government Law Section
(916) 210-6056
Emily.Gargiulo@doj.ca.gov

From: Natasha Minsker [mailto:nminsker@acluca.org]
Sent: Thursday, March 01, 2018 4:42 PM
To: Emily Gargiulo <Emily.Gargiulo@doj.ca.gov>
Cc: Connie LeLouis <Connie.LeLouis@doj.ca.gov>
Subject: RE: inactive measures prior to 2010

Hello Emily,

Do you have notices of withdrawl for these initiatives?

A.G. File No. 07-0097, Amdt. #3-S
07-0096, The Victim's Rights and Protection Act: Marsy's Law - Version 3
07-0095, The Victim's Rights and Protection Act: Marsy's Law - Version 2
07-0088, The Victim's Rights Act of 2008: Marsy's Law. [V1]

Thanks,

Natasha

PROOF OF SERVICE

I, Danielle Flores, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City of San Francisco, County of San Francisco, California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of the American Civil Liberties Union Foundation of Northern California, and my business address is 39 Drumm Street, California 94111.

On October 9, 2018, I served the following document(s):

Request for Judicial Notice in Support of Proposed Brief of *Amici Curiae* ACLU of Northern California, ACLU of Southern California, ACLU of San Diego and Imperial Counties and California law professors

In the Following Case:
In re Humphrey,
on Habeas Corpus.
No. S247278

on the parties stated below by the following means of service:

George Gascon
Sharon Woo
Wade K. Chow
Allison G. Macbeth
Office of San Francisco District Attorney
850 Bryant Street, Room 322
San Francisco, CA 94103
Attorneys for Petitioner

Jeff Adachi
Matt Gonzalez
Christopher F. Gauger
Anita Nabha
Chesa Boudin
Office of the Public Defender
555 Seventh Street
San Francisco, CA 94103
Attorneys for Respondent

Alec Karakatsanis
Katherine Claire Hubbard
Civil Rights Corps
910 17th Street NW, Suite 200
Washington, DC 20006
Attorneys for Respondent

Thomas Gregory Sprankling
Wilmer Cutler Pickering Hale and Dorr LLP
950 Page Mill Road
Palo Alto, CA 94304
Attorneys for Respondent

Seth Waxman
Daniel S. Volchok
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue N.W.
Washington, D.C. 20006
Attorneys for Respondent

Xavier Becerra
Katie L. Stowe
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Hon. Brendan Conroy
Hon. Joseph M. Quinn
Superior Court of California
County of San Francisco
850 Bryant Street, Room 101
San Francisco, CA 94103

First District Court of Appeal
350 McAllister Street
San Francisco, CA 94102

X By U.S. Mail enclosing a true copy in a sealed envelope in a designated area for outgoing mail, addressed with the aforementioned addressees. I am readily familiar with the business practices of the ACLU Foundation of Northern California for collection and processing of correspondence for mailing with the United States Postal Service and correspondence so collected and processed is deposited with the United States Postal Service on the same date in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 9, 2018 at San Francisco, California.

_____

Danielle Flores,
Declarant