IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. RIVERSIDE COUNTY SUPERIOR COURT, Respondent, PABLO ULLISSES LARA, JR., Real Party in Interest.	S241231 Ct. App. No. E067296 Super. Ct. No. RIF1601012

REAL PARTY IN INTEREST'S ANSWERING BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page No.

CALIFORNIA CASES

FEDERAL CASES

PENAL CODE

WELF. & INST. CODE

LEGISLATION

SECONDARY SOURCES

BALLOT MEASURES

CODE OF CIVIL PROCEDURE

INTRODUCTION

On November 8, 2016, the California voters adopted Proposition 57, "The Public Safety & Rehabilitation Act of 2016," an initiative designed to change the manner in which juveniles and eligible adult offenders are punished for crimes they were found to have committed, but which did not change the proscribed punishment for any crime. The following day, when the initiative took effect, Pablo Lara, Jr. was the defendant in a pending criminal case, based on acts allegedly committed when he was fourteen and fifteen years old, which had been filed directly in a court of criminal jurisdiction.

Pablo's case, which was still in a pre-trial status, was certified to the juvenile court for proceedings consistent with the amendments the initiative had made to juvenile law. On March 30, 2017, Pablo was found to be a fit and proper subject to be treated as a child by the justice system with regard to the alleged crimes, and the People's motion to transfer the cause to adult criminal court was denied. The question in this case is whether the juvenile proceedings in which Pablo's transfer hearing occurred was an authorized application of the juvenile law amendments of Proposition 57, or whether it was an unlawful retroactive application of the new law. The answer turns on whether the juvenile transfer provisions of Proposition 57 were intended to deal broadly with the manner in which children believed to have committed crimes are to be treated; i.e. "punished," under the law or whether, as Petitioner contends, they were intended merely to deal with the filing of serious charges in a particular forum.

As explained herein, the narrow interpretation advanced by Petitioner is inconsistent with the intent of the voters in adopting Proposition 57, and, if adopted, would frustrate the initiative's purpose.

ISSUE PRESENTED

Do the juvenile-law amendments enacted by Proposition 57 ("The Public Safety & Rehabilitation Act of 2016") apply retroactively[1] to cases pending in a court of criminal jurisdiction before the law's effective date?

STATEMENT OF FACTS

Pablo is accused of committing various sexual crimes against a young child when he was fourteen and fifteen years old. The truth of the allegations against him has yet to be determined, and, as Petitioner acknowledges, the facts underlying the charged crimes are irrelevant to the issue presented.[2]

As Petitioner's description of the procedural history of the case is accurate and thorough, rather than reiterating the procedural facts herein, Real Party adopts the statement of procedural facts as set forth in Petitioner's Opening Brief.[3]

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[1] This brief adopts the statement of the Issue Presented as framed by this court. However, as explained herein, this case does not pose a question of "retroactive" application of Proposition 57, as the "triggering event," commencement of trial, had not yet occurred when the initiative became effective.
[2] Opening Brief on the Merits, hereinafter "OBM," at p. 10, fn. 1.
[3] OBM, pp. 10-15.

STANDARD OF REVIEW

The instant case involves a pure question of law, and the lower court's determination is reviewed de novo. (*In re J.L.* (2015) 242 Cal.App.4th 1108, 1114.)

ARGUMENT

THE JUVENILE LAW AMENDMENTS OF PROPOSITION 57 APPLY TO DIRECT-FILED CASES IN WHICH TRIAL HAD NOT YET COMMENCED AS OF THE INITIATIVE'S EFFECTIVE DATE

In analyzing the application of Proposition 57's juvenile-law amendments to the case at hand, the initial question which must be answered is what constitutes "retroactive" versus "prospective application." Generally, application of a change in the law is retroactive "only if it attaches new legal consequences to, or increases a party's liability for, an event, transaction, or conduct that was completed before the law's effective date." (*People v. Grant* (1999) 20 Cal.4th 150, 157, quoting *Landgraf v. USI Film Products* (1994) 511 U.S. 244, 269-270 & fn. 23.) The critical question is "whether the last act or event necessary to trigger application of the statute occurred before or after the statute's effective date." (*Grant, supra*, at p. 157, quoting *Landgraf*, at p. 270.) A law is not retroactive "merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment." (*Grant, supra*, at p. 157, quoting *Kizer v. Hanna* (1989) 58 Cal.3d 1, 7.)

What, then, is the last act or event necessary to trigger application of the amendments to Welfare and Institutions Code[4] section 707 made by Proposition 57? Petitioner contends that the last act or event necessary to trigger application of the juvenile law amendments of Proposition 57 is the filing of a case in adult court. (OBM, p. 41.) This can't be right, because Proposition 57 wasn't designed to deal simply with the *filing* of an accusatory pleading against one believed to have committed a crime when he or she was a minor. It was designed to deal with the manner in which such individuals, if adjudicated guilty of a qualifying offense, may lawfully be "dealt with" under the law; in other words, how they may be punished, if proved to have committed qualifying crimes.

A. The Juvenile Law Amendments Of Proposition 57 Deal With The Manner In Which Juvenile Offenders Are To Be Dealt With By The Justice System For Offenses They Are Found To Have Committed

In order to answer this critical question, this court must examine the language of the initiative, construing it in context with the initiative as a whole, and, if the language is ambiguous, may consider extrinsic material which evidences voter intent. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.)

Turning first to the language, it is clear that, as evidenced by its title, Proposition 57, "The Public Safety and Rehabilitation Act of 2016," was intended to ameliorate punishment for certain crimes (nonviolent felonies) and crimes

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[4] Subsequent statutory references are to the Welfare and Institutions Code unless otherwise indicated.

committed by certain persons (juveniles), emphasizing rehabilitation rather than imprisonment, and by so doing, save the taxpayers money. As stated in the initiative, the purposes of Proposition 57 were to:

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

(Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, p. 141.) Section 5 of the initiative informs the voters, "This act shall be broadly construed to accomplish its purposes." (Ballot Pamp., Gen. Elec. (Nov. 8, 2016), text of Prop 57, p. 145.)

To effectuate this purpose, the initiative amended the California Constitution to allow state prisoners to earn enhanced conduct credits through participation in rehabilitative programs and give those imprisoned upon conviction for a nonviolent felony an opportunity for early release. The initiative also amended provisions of the Welfare and Institutions Code, sections 602 and 707, changing the manner in which the proper sentencing scheme for an eligible minor proved to have committed an enumerated crime is selected.

In response to state budgetary constraints and in light of a now well-recognized body of research regarding the futility of imposing lengthy prison sentences as a means of ensuring public safety and preventing crime, Proposition 57 was adopted so that the criminal and juvenile justice system could better focus

"on evidence-based rehabilitation for juveniles and adults because it is better for public safety than our current system." (Ballot Pamp., Gen. Elec. (Nov. 8, 2016), Argument in Favor, p. 58.) The initiative is the most recent in a series of laws designed to change the manner in which those adjudicated guilty of charged crimes are treated under the law.[5]

Although the word "punishment" appears nowhere in the text of Proposition 57 or the related ballot materials, that the initiative was intended to deal with punishment is plain, not merely from the title, but from the related ballot materials, which informed voters that, by changing the manner in which minors can be prosecuted for crimes, Proposition 57 would result in "fewer youths tried in adult court," would focus resources on "evidence-based rehabilitation" of minors in the juvenile system, and would reduce recidivism. (Ballot Pamp., Gen. Elec. (Nov. 8, 2016), argument in favor of Prop. 57, p. 58; Analysis by the Legislative Analyst, p. 56.) By eliminating direct-filing and requiring that determinations of

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[5] See, e.g., Proposition 36, the "Substance Abuse and Crime Prevention Act of 2000" [requiring that simple nonviolent drug possession offenders be afforded a meaningful opportunity for drug treatment and education, rather than incarceration], Proposition 36, the "Three Strikes Reform Act of 2012" [prohibiting indeterminate term sentences on nonviolent low-risk felons and creating a mechanism for eligible offenders serving such sentences to petition the committing court for resentencing], Proposition 47, the "Safe Neighborhoods and Schools Act" [reducing penalties for specified drug and theft offenses previously punishable as felonies and creating a mechanism for eligible offenders serving felony sentences for such offenses to petition the committing court for resentencing], and Proposition 64, the "Control, Regulate and Tax Adult use of Marijuana Act" [reducing penalties for specified marijuana-related offenses and permitting eligible offenders serving felony sentences for such offenses to petition the committing court for resentencing].

fitness be made by a judicial officer, considering individualized factors drawn from social science research regarding youthful offenders and their capacity for rehabilitation rather than being influenced by offense-based or age-based presumptions of "unfitness", the initiative changed the manner in which juvenile offenders potentially may be prosecuted and tried, and, if convicted, punished.[6]

Under juvenile law, one who has been adjudicated a ward under section 602 may be punished, but only in accordance with the philosophy of section 202. Pursuant to that section, upon an adjudication of wardship, the court must insure that minors under the court's jurisdiction receive "care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances." (§ 202, subd. (b).) "Punishment" is permitted as a type of "guidance" but is authorized only as consistent with the rehabilitative objectives of the juvenile court law. (§ 202, subds. (b) and (e).) Commitment of a minor to a state or local detention facility is authorized only until a ward reaches the age of twenty-five, unless the minor is civilly committed pursuant to an unrelated provision of the Welfare and

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[6] As this Court recognized in *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 559-560, a prosecutor's decision to file charges against a juvenile in adult court will "dictate the sentencing scheme that will apply upon conviction." It is for this reason that certification of a juvenile offender to an adult court "has been accurately characterized as 'the worst punishment the juvenile system is empowered to inflict' " (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 810, quoting Note, Separating the Criminal from the Delinquent: Due Process in Certification Procedure (1967) 40 So.Cal.L.Rev. 158, 162).

Institutions Code. (§ 607.) Notably, under juvenile court law, "retribution" is not a legitimate purpose of punishment. (§ 202, subd. (e).)

The same cannot be said as to those tried and convicted in a court of criminal jurisdiction ("adult court"). As to such individuals, retribution has been long-recognized as a legitimate penological objective. (*People v. Ochoa* (2001) 26 Cal.4th 398, 463, rehearing denied, certiorari denied 535 U.S. 1040, citing *Gregg v. Georgia* (1976) 428 U.S. 153, 183 and *People v. Roberts* (1992) 2 Cal.4th 271, 316; see also (Cotton, *Back With a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Punishment* (2000) 37 Am.Crim. L.Rev. 1313, 1316, citing Kant, *Political Writings, The Metaphysics of Morals* (Hans Reiss ed.1991) pp. 131, 156.) And the permissible punishments for those tried and convicted of serious offenses in adult court are far more severe than what would be authorized under juvenile court law, including the potential for indeterminate term sentences and even life without the opportunity of parole. In light of the foregoing, it is overly simplistic to view Proposition 57 as merely changing the manner in which criminal proceedings stemming from crimes allegedly committed by a child may lawfully be initiated.

B. Broad Application Of The Juvenile Law Amendments Is Consistent With The Legal Backdrop Pertaining To Juvenile "Punishment"

When interpreting an initiative, there is a presumption that voters are aware of existing laws at the time the initiative is adopted. (*People v. Superior Court (Cervantes)* (2014) 225 Cal.App.4th 1007, 1015.) Accordingly, Proposition 57

must be analyzed against the backdrop of significant recent developments in decisional law and corresponding legislation pertaining to punishment of juvenile offenders.

Prior to 2000, any case involving a person believed to have committed a crime when he or she was younger than eighteen had to be initiated in the juvenile court. A substantial shift occurred in 1999, with the enactment of Senate Bill 334, the "No More Victims' Violence Prevention and School Safety 2000 Strategy," effective January 1, 2000 ("SB 334"). SB 334, designed to ensure "the safety of the people of California from serious and violent crime," including crime committed by juveniles, added subdivision (b) to section 602, creating an exception to the aforementioned rule requiring that cases involving those believed to have committed a crime when a minor be initiated in the juvenile court. After SB 334, prosecutors were required to file enumerated criminal charges against minors believed to have committed crimes when they were at least sixteen years old in a court of criminal jurisdiction. (Stats.1999, Ch. 996 (S.B. 334), § 12.2.)

While SB 334 was working its way through the Legislature, an initiative was working its way to the electorate, Proposition 21, the Gang Violence and Juvenile Crime Prevention Act. Proposition 21, which was motivated by a reported increase in juvenile arrests over the preceding decade and was geared toward preventing an *anticipated* increase in gang violence in the future, made changes to the law related to the treatment of juvenile offenders far more sweeping than those made by SB 334. Among the findings and declarations of the initiative

was the following overarching statement of purpose: "Dramatic changes are needed in the way we treat juvenile criminals, criminal street gangs, and the confidentiality of the juvenile records of violent offenders if we are to avoid the predicted, unprecedented surge in juvenile and gang violence." (Ballot Pamp., Spec. Elec. (March 7, 2000) text of Proposition 21, § 2, subd. (k), available online at http://vigarchive.sos.ca.gov/2000/primary/propositions/21text.htm.) Proposition 21 required more juvenile offenders to be tried in adult court, required that certain juvenile offenders be held in local or state correctional facilities instead of juvenile facilities, changed the type of probation available for juvenile felons, and reduced confidentiality protections for juvenile offenders. With regard to those convicted in adult court, the initiative increased penalties for gang-related crimes and required convicted gang members to register with local law enforcement agencies and increased criminal penalties for certain serious and violent offenses.

Proposition 21 amended the two statutes changed by Proposition 57, sections 602 and 707, as follows:

- Section 602, subdivision (b) was amended to lower the eligible age for "direct filing" to fourteen.
- Section 707 was amended so as to expand circumstances in which minors are presumed "unfit" to be dealt with under juvenile law. The list of enumerated felony offenses triggering a presumption of unfitness was augmented, and the triggering age was reduced to fourteen, instead of sixteen.

- Section 707 was also amended to add subdivision (d), which permitted the prosecuting agency to direct-file a complaint charging enumerated crimes believed to have been committed by a child when he was at least sixteen and enumerated crimes believed to have been committed by a child when he was at least fourteen under specified circumstances.

Over the decades following the adoption of Proposition 21, revolutionary changes occurred, both in terms of statutory and decisional law, with regard to the philosophy of punishing juvenile offenders. These changes stemmed from the United States Supreme Court's recognition of a significant body of social and behavioral science in a series of cases, *Roper v. Simmons* (2005) 543 U.S. 551 ("*Roper*"), *Graham v. Florida* (2010) 560 U.S. 48 ("*Graham*"), *Miller v. Alabama* (2012) 567 U.S. 460 ("*Miller*"), and this Court's adoption of the principles articulated in those cases in *People v. Gutierrez* (2014) 58 Cal.4th 1354 ("*Gutierrez*") and *People v. Caballero* (2012) 55 Cal.4th 262 ("*Caballero*").

In *Roper*, the High Court held that imposition of the death penalty on a juvenile offender is prohibited by the Eighth and Fourteenth Amendments. (*Roper*, 543 U.S. at p. 561.) This conclusion was based on three general differences between juveniles and adults, which, in the Court's view, prohibit classification of juveniles as among the worst offenders, deserving of the most severe punishment the law allows.

> First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions."(Citation.) It has been noted that "adolescents are overrepresented statistically in virtually every category of reckless behavior." (Citation.) In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent . . . .
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> The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. (Citation.) This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. (Citation.)
>
> The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. (Citation.)

(*Roper*, 543 U.S. at pp. 569-570, citations omitted.) In light of these three factors, which result in "the diminished culpability of juveniles", the Court concluded that penological justifications for the death penalty, retribution and deterrence, apply with less force to juveniles than to adults. (*Id.*, at p. 571.)

> Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult. Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity

(*Ibid.*) And to the extent the death penalty may have any deterrent effect, "because the same characteristics that render juveniles less culpable than

adults suggest as well that juveniles will be less susceptible to deterrence." (*Id.,* at p. 562.)

Five years later, in *Graham*, the High Court, adopting the principles articulated in *Roper*, held that juvenile offenders convicted of non-homicide offenses cannot be sentenced to life without an opportunity for parole. (*Graham,* 560 U.S. at p. 74.) Recognizing that "defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers," the Supreme Court reasoned that, "when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." (*Id.* at p. 69.) The Court elaborated as to why life without parole "is an especially harsh punishment for a juvenile."

> Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16–year–old and a 75–year–old each sentenced to life without parole receive the same punishment in name only. (Citation.) This reality cannot be ignored.

(*Id.*, at pp. 70-71, citations omitted.)

The Court then explained why the goals of retribution, deterrence, incapacitation, and rehabilitation do not support such a sentence. The Court adopted *Roper*'s rationale as to why the case for retribution is not as strong with a minor, particularly one who did not commit homicide, as with an adult. (*Id.*, at pp. 71-72.) The Court also adopted *Roper*'s rationale that "the same characteristics

that render juveniles less culpable than adults suggest ... that juveniles will be less susceptible to deterrence." (*Id.*, at p. 72.) Due to juveniles' "lack of maturity and underdeveloped sense of responsibility" which often result "in impetuous and ill-considered actions and decisions," the Court recognized, "they are less likely to take a possible punishment into consideration when making decisions." (*Ibid.*, quoting *Johnson v. Texas* (1993) 509 U.S. 350, 367.) As for incapacitation, the Court recognized that "the characteristics of juveniles" make a judgment of incorrigibility questionable" (*Id.* at pp. 72-73) and concluded that a juvenile offender is entitled to a chance "to demonstrate growth and maturity." (*Id.*, at p. 73.) Finally, the Court considered the penological goal of rehabilitation and concluded that "in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability," a State's "irrevocable judgment about that person's value and place in society" cannot be justified. (*Id.*, at p. 74.)

Two years later, in *Miller*, the High Court reiterated these principles and again extended the holding of *Roper*, this time concluding that a mandated sentence of life without an opportunity for parole is unconstitutional even for homicide offenders who were juveniles when their crimes were committed. (*Miller, supra,* 567 U.S. at p. 479.) The Court recognized that *Roper* and *Graham* had established that "children are constitutionally different from adults for purposes of sentencing" for several reasons based "not only on common sense—on what 'any parent knows'—but on science and social science as well." (*Id.* at p. 471.)

> "First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. [Citations.] Second, children 'are more vulnerable ... to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. [Citation.] And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].' "

(*Id.*, at p. 471, quoting *Roper*, *supra*, at p. 569-570 and *Graham*, *supra*, at p. 68.)

In accordance with this authority, this court, in *Gutierrez*, delineated several factors which, under the Eighth Amendment, must be considered when sentencing a juvenile, even for the most serious of offenses: the offender's "chronological age and its hallmark features-among them, immaturity, impetuosity, and failure to appreciate risks and consequences" (quoting *Miller v. Alabama*, *supra*, at p. 2468); evidence concerning the family and home, including childhood abuse or neglect, substance abuse in the family, lapses in adequate parenting, exposure to violence and susceptibility to psychological or emotional disturbance; evidence concerning the offense, including the defendant's participation and any pressure, whether from family members or peers, that could have affected defendant; evidence of any effect of the inability of the defendant, because of youth, to deal with police, prosecutors, or to assist his or her counsel; and any evidence related to rehabilitation, noting that because a juvenile does not have the fully formed character of an adult, " 'his actions[are]less likely to be "evidence of irretrivabl[e] deprav[ity]." ' " (*Gutierrez*, *supra,* at pp. 1388–1389.)

Finally, in 2012, this Court echoed these principles in *Caballero*, holding "that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy" violates the Eighth Amendment and that these juveniles may not lawfully be deprived, at sentencing, "of a meaningful opportunity to demonstrate their rehabilitation and fitness to renter society in the future." (*Caballero*, *supra*, 55 Cal.4th at p. 268.) In *Caballero*, this court urged the Legislature "to enact legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity." (*Id.*, at p. 269, fn. 5.) It did.

By that time, the Legislature already had enacted Senate Bill 81, which restricted the court's ability to commit wards to a state facility. (Reg. Sess. 2007-2008, Ch. 175 (S.B. 81), §§ 21, 22.) In 2012, the Legislature enacted Senate Bill 9, amending Penal Code section 1170 so as to permit the vast majority of juveniles sentenced to life without opportunity for parole to petition, at various times during their term of imprisonment, for recall of their "LWOP" sentence and resentencing to a life with parole sentence. (Reg. Sess. 2011-2012, Ch. 828 (S.B. 9), § 1.) In 2013, the Legislature enacted Senate Bill 260, amending Penal Code sections 3041, 3046, 3051, and 4801 to create "youth offender parole," thereby affording the vast majority of imprisoned juvenile offenders serving lengthy determinate term sentences or indeterminate term sentence, "a meaningful opportunity to obtain

release". (Reg. Sess. 2012-2013, Ch. 312 (S.B. 260), § 4; Pen. Code, § 3051, subd. (e).) In 2015, these "youth offender parole" statutes were again amended to require such an opportunity for eligible inmates who had been younger than twenty-three when their commitment offense occurred. (Reg. Sess. 2015-2016, Ch. 471 (S.B. 261), § 1.) In addition, in 2015, the Legislature enacted Senate Bill 382, amending WIC 707 to specify evidence-based individualized youth-related factors which must be considered in determining whether a minor is fit to be treated under the juvenile court law. (Reg. Sess. 2014-2015, Ch. 234 (S.B. 382), § 1.) It was against this legal backdrop that Proposition 57 came before the voters for approval in November, 2016.

C. Application Of Proposition 57 In The Case At Hand Is Consistent With The Voters' Intent

As the Court of Appeal concluded, prospective application of the juvenile law amendments of Proposition 57 to pending direct-filed cases is consistent with the voters' intent. (*People v. Superior Court* ("*Lara*") (2017) 9 Cal.App.5th 753, 776-777, revw. granted May 17, 2017.)[7]

This court's 2004 decision in *John L. v. Superior Court* (2004) 33 Cal.4th 158 (*John L.*"), is highly instructive. In *John L.*, this Court was called upon to determine whether Proposition 21's juvenile law amendments applied to cases

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[7] Division of the Fourth District Court of Appeal recently reached the opposite conclusion in *People v. Superior Court* ("*Walker*") (2017) 12 Cal.App.5th 687, 710, pet. for rev. filed July 11, 20017, adopting Petitioner's position, that the *filing* of a criminal complaint is the last act necessary to trigger application of the new law, application of Proposition 57 to Mr. Walker was retroactive.

involving alleged probation violations stemming from conduct occurring prior to the effective date of the initiative and held that application of the initiative's amendments to the petitioners was not retroactive. (*John L., supra*, at pp. 168-169.) The Court found it significant that the amended statute, section 777, did not explicitly require that the underlying section 602 offense have been committed on or after the initiative's effective date for the changes to apply. (*John L., supra*, at p. 169.) The Court noted that the statute's purpose, as reflected in ballot materials, "suggests an intent to affect the maximum number of juvenile probation violation cases as soon as possible" and concluded that the interpretation advanced by the petitioners would not further the voters' intent. (*John L., supra*, at pp. 169-170.) Finally, the Court noted the rule articulated in *Tapia v. Superior Court* (1991) 53 Cal.3d 282, that "a law addressing *the conduct of* trials ... addresses conduct in the future" and is actually "prospective in nature" since it relates to the procedure to be followed in the future." (*John L., supra,* at p. 170, quoting *Tapia, supra*, at pp. 288-289.) Said the Court, "We must assume that Proposition 21 voters knew about and followed *Tapia*...." (*John L., supra,* at p. 171.) The Court concluded, "Nothing in the relevant text or history suggests an intent to postpone this effective date, or to otherwise limit Proposition 21 depending upon when criminal conduct in the original section 602 proceeding occurred. We reject petitioners' contrary construction." (*Ibid.*)

In re Chong K. (2006) 145 Cal.App.4th 13, which examined the application of Proposition 21's amendments to section 781, subdivision (a), the juvenile

sealing statute, to a juvenile offender whose crime occurred prior to the initiative's effective date, is also helpful. The appellant claimed that denying him the ability to seal his records based on a post-adjudication amendment to the juvenile sealing provision was an improper retrospective application of the law. (*In re Chong K., supra,* 145 Cal.App.4th at p. 17.) The Court of Appeal, relying on *John L.*, disagreed. (*Id.* at p. 18.) The Court rejected the appellant's attempt to distinguish *John L.* by characterizing the change in section 781 as a "substantive" change, as compared to the change in 777, which, according to appellant, was "procedural." The Court found this point to be immaterial. Because the statute at issue did not clearly state that it was meant to apply only to those whose crimes were committed after the initiative's effective date, the Court concluded, the voters intended the amendment to operate retrospectively. (*Id.*, at p. 19.)

Applying a similar analysis to Proposition 57, the same conclusion must be reached. The purpose of the initiative, as discussed in the ballot materials, suggests an intent to affect the manner in which *all* juveniles subject to proceedings based on allegations related to criminal conduct are treated. As in *John L.*, the initiative does not state that its changes are intended to apply only to those who commit crimes (or against whom cases stemming from those crimes are filed) after a particular date. Given the rule of *Tapia*, which has existed since 1991, it must be assumed that Proposition 57 voters, like Proposition 21 voters, knew about and followed *Tapia.*

Petitioner contends that the Court of Appeal erred in its reliance on *Tapia v. Superior Court* (1991) 53 Cal.3d 282 ("*Tapia*"), interpreting this Court's ruling in *Tapia* in an overbroad manner and fundamentally misapplying the term of art "conduct of trials". (OBM, p. 35) Petitioner's reading of *Tapia* is overly restrictive. Like Proposition 57, *Tapia* does not exist in a vacuum, and the rule articulated therein must be applied with an understanding of the principles underlying the cases which preceded it.

As far back as 1909, Justice Shaw wrote, in a concurring opinion, " 'A retrospective law 'is one which operates upon matters which occurred, or rights and obligations which existed before the time of enactment.' " (*Smith v. Mathews* (1909) 155 Cal. 752, 761, quoting 26 Am. & Eng. Ency. of Law, 692, 693.) By 1991, when *Tapia* was decided, this principle had been adopted and reiterated repeatedly by this court in the context of several civil appeals. (See e.g. *People v. Allied Architects' Ass'n of Los Angeles* (1927) 201 Cal. 428, 436; *City of Los Angeles v. Oliver* (1929) 102 Cal.App. 299, 309; *Aetna Cas. & Sur. Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d 388, 391; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1206-1209.)

At issue in *Tapia* was whether a provision of Proposition 115 which changed the manner in which voir dire was conducted in criminal trials applied to a pending case stemming from alleged crimes committed prior to the law's effective date. Like Proposition 21, Proposition 115 focused on the rights of crime victims, which, as the voters found, had been "too often ignored by our courts and

by our State Legislature." Among the ballot measure's expressed purposes was to "restore balance to our criminal justice system", "create a system in which justice is swift and fair," and "create a system in which criminals receive just punishment". (1990 Cal. Legis. Serv. Prop. 115 (West), § 1.) To that end, Proposition 115 amended the California Constitution to restrict the State's ability to afford criminal defendants greater rights than those afforded by the federal constitution, to afford the people of the State of California a right to "due process of law" and "a speedy and public trial", to permit introduction of hearsay evidence at preliminary hearings, and to provide that discovery in criminal cases "be reciprocal in nature." (*Id.*, §§ 3, 4, 5.) The initiative resulted in the enactment of several statutes, including Code of Civil Procedure section 223, which provides, "In a criminal case, the court shall conduct the examination of prospective jurors." (*Id.*, § 7.)

After the superior court ruled that it intended to apply Code of Civil Procedure section 223 at Mr. Tapia's upcoming trial, Tapia sought extraordinary relief. He argued that application of the initiative's provisions as to him was retrospective and impermissible, since his alleged crime pre-dated the effective date of the initiative. (*Tapia, supra*, 53 Cal.3d at p. 288.) This court concluded that the voir dire provision of the law did not have retrospective effect "merely because it draws upon facts existing prior to its enactment"; rather, the effect of such a law "is actually prospective in nature" since it relates to an event which will occur in the future. (*Ibid*, quoting *Strauch v. Superior Court* (1980) 107

Cal.App.3d 45, 49, quoting *Olivas v. Weiner* (1954) 127 Cal.App.2d 597, 600-601.) The *Tapia* court likened the change in the law at issue to other laws which had been found to operate prospectively, such as a law governing the manner in which key facts can be proved in probate trials (*Estate v. Patterson* (1909) 155 Cal. 626), the addition of a filing requirement in malpractice suits (*Strauch v. Superior Court, supra*, at p. 49), and a new statute calling for dismissal due to prolonged failure to prosecute a civil claim (*Republic Corp. v. Superior Court* (1984) 160 Cal.App.3d 1253). (*Tapia, supra*, at pp. 288-291.) From the Court's discussion of these cases, a rule emerged; "that a law governing the conduct of trials is being applied "prospectively" when it is applied to a trial occurring after the law's effective date, regardless of when the underlying crime was committed or the underlying cause of action arose." (*Tapia, supra*, at p. 289.) The Court noted that its use in past cases of the terms "substantive" and "procedural" was not dispositive of whether the law operates prospectively in a certain situation. It is "the law's effect, not its form or label, which is important." (*Ibid.*, citing *Aetna Casualty, supra*, 30 Cal.2d at p. 394; *Evengelatos, supra,* 44 Cal.3d at pp. 1225-1226, fn. 26.) In other words, *Tapia* in no way changed the law governing prospective and retroactive application of new laws: it merely applied the law to the circumstances in the case at hand.

So, the question remains, did the trial court's application of the juvenile law amendments of Proposition 57 in this case operate "upon matters which occurred, or rights and obligations which existed before the time of enactment" in such a

manner as to render it retroactive? No. At issue here is not the right to have a prosecutor select where to *file* an accusatory pleading. At issue is the right of crime victims and the people of the State of California to have a juvenile offender dealt with under the appropriate sentencing scheme upon a finding that he or she actually committed one or more enumerated crimes.[8] That right does not vest unless and until the defendant is adjudicated guilty, an act which had yet to occur in this case when Proposition 57 became effective.

The case of *People v. Shields* (2007) 155 Cal.App.4th 559 illustrates this point. In 2005, the People filed a petition under Welfare and Institutions Code section 6604 to commit Mr. Shields to the Department of State Hospitals as a "sexually violent predator" for a two-year term. Before the allegations of the petition had been adjudicated, both Senate Bill 1128 and Proposition 83 were adopted, eliminating statutory provisions authorizing the extension of expired SVP commitments and changing the term of a section 6604 commitment from two-years to an indeterminate term. Thereafter, the People filed an amended petition,

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[8] Article 1, section 28, subdivision of the California Constitution enumerates the rights of crime victims and all of the people of California to expect 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." (Cal. Const., art. I, § 28, subd. (a)(4) and (a)(5).) The Constitution expressly affords them the right to "Safe Schools," "Truth-in-Evidence," "Public Safety Bail", "Use of Prior Convictions," "Truth in Sentencing," and "Reform of the parole process." (Cal. Const., art. I, §28, subd. (f).)

seeking to commit Mr. Shields for an indeterminate term, and Mr. Shields contended that this was an impermissible retroactive application of the new law, as the petition to commit him for a two-year term had been filed prior to the change in the law. After ascertaining the purpose of Proposition 83's amendments to section 6604, "to strengthen and improve the laws that punish and control sexual offenders," the Court of Appeal concluded that the amendments to section 6604 were meant to apply to Mr. Shields. (*Shields, supra,* 155 Cal.App.4th at p. 564.)

The same result was reached in *Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275. Bourquez was one of several individuals who were subjects of unadjudicated petitions to extend their section 6604 commitments for new two-year terms when Proposition 83 was passed. (*Bourquez, supra*, 145 Cal.App.4th at pp. 1279-1280.) After the change in the law, the People amended the petition, seeking commitment for an indeterminate term, rather than a two-year term. Bourquez argued that application of the "indeterminate term" provision to him was retroactive, since the petition to commit him had been filed prior to the effective date of Proposition 83. The Court of Appeal disagreed. Citing *People v. Grant*, *supra,* 20 Cal.4th at p. 157[9], the Court held, "Because a proceeding to

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[9] In *Grant,* this Court considered whether the defendant could lawfully be convicted of continuous sexual abuse of a child (Pen. Code, § 288.5) based on conduct proved to have begun prior to the effective of the statute and to have continued after that date. (*People v. Grant*, *supra,* 20 Cal.4th at p. 153.) Citing the general presumption regarding retroactive application of laws, this Court, after examining the text of the bill at issue, concluded that section 288.5 was not intended to apply in a retroactive manner. However, because the last act of abuse, deemed by this Court as "the last act necessary to trigger application of section

extend commitment under the SVPA focuses on the person's current mental state, applying the indeterminate term of commitment of Proposition 83 does not attach new legal consequences to conduct that was completed before the effective date of the law." (*Bourquez v. Superior Court*, *supra,* 156 Cal.App.4th at p. 1289.)

As with civil commitments, proceedings under section 602 are not focused on the "filing" of pleadings. They are focused on the treatment of identified individuals who are found to meet specified statutory criteria; that the person, while under the age of eighteen, violated the law. Unless and until such a determination is made, consequences may not be imposed. In other words, unless a determination has been made, under applicable procedures, that an eligible minor actually committed an enumerated offense, the determination as whether he or she should be "dealt with" as a juvenile or an adult cannot be made. Accordingly, application of the juvenile law amendments to Real Party, whose trial had not yet commenced on the effective date of the initiative, is not retroactive.

D. The Statutory Scheme Left Intact By The Voters Permits Application Of The Initiative's Juvenile Law Amendments To Pending Direct-Filed Cases In Which Trial Has Not Commenced

Petitioner expresses concerns about the procedural "complexity" of applying the juvenile law amendments of Proposition 57 to pending direct-filed cases. (OBM, p. 46-52.) These concerns are unfounded.

288.5," occurred after the statute's effective date, the defendant's conviction was not a retroactive application of the law. (*Id.*, at pp. 157-158.)

When analyzing provisions of juvenile law changed by the voters with the adoption of Proposition 57, one must also acknowledge provisions which were left intact. In its current form, section 602, states the general rule that any person younger than 18 when he or she committed a crime comes under the jurisdiction of the juvenile court:

> Except as provided in Section 707, any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

(§ 602.) Notably, section 602 does not create any exception for pending cases which were direct filed in adult court prior to the adoption of Proposition 57; however, it does reference section 707, which permits proceedings against such a person to proceed in a court of criminal jurisdiction, but only after a judicial officer has made a determination, taking into account all relevant factors, that the minor is not fit to be treated as a juvenile for crimes he or she allegedly committed while a juvenile. Like section 602, section 707 creates no exception for pending direct-filed cases.

Section 604, also left intact with the adoption of Proposition 57, sets forth the procedures for a trial court to follow whenever it appears that the subject of a pending criminal case is a juvenile offender who has not been found "unfit" under section 707.

> (a) Whenever a case is before any court upon an accusatory pleading and it is suggested or appears to the judge before whom the person is

> brought that the person charged was, at the date the offense is alleged to have been committed, under the age of 18 years, the judge shall immediately suspend all proceedings against the person on the charge. The judge shall examine into the age of the person, and if, from the examination, it appears to his or her satisfaction that the person was at the date the offense is alleged to have been committed under the age of 18 years, he or she shall immediately certify all of the following to the juvenile court of the county:
> (1) That the person (naming him or her) is charged with a crime (briefly stating its nature).
> (2) That the person appears to have been under the age of 18 years at the date the offense is alleged to have been committed, giving the date of birth of the person when known.
> (3) That proceedings have been suspended against the person on the charge by reason of his or her age, with the date of the suspension.
> The judge shall attach a copy of the accusatory pleading to the certification.
>
> (b) When a court certifies a case to the juvenile court pursuant to subdivision (a), it shall be deemed that jeopardy has not attached by reason of the proceedings prior to certification, but the court may not resume proceedings in the case, nor may a new proceeding under the general law be commenced in any court with respect to the same matter unless the juvenile court has found that the minor is not a fit subject for consideration under the juvenile court law and has ordered that proceedings under the general law resume or be commenced.
>
> (c) The certification and accusatory pleading shall be promptly transmitted to the clerk of the juvenile court. Upon receipt thereof, the clerk of the juvenile court shall immediately notify the probation officer who shall immediately proceed in accordance with Article 16 (commencing with Section 650).

(§ 604.) Section 604 contains only one narrow exception. It does not apply "to any minor who may have a complaint filed directly against him or her in a court of criminal jurisdiction pursuant to Section 707.01." (§ 604.) Section 707.01 does not encompass all direct-filed cases; rather, it specifically deals only with those juveniles who have been "found an unfit subject to be dealt with under the juvenile

court law pursuant to Section 707." (§ 707.01.)

As stated in section 605, once a case has been certified to the juvenile court, Article 16 dictates the applicable procedures. Proceedings are initiated by the prosecutor filing a verified petition in the juvenile court alleging that the minor comes within the court's jurisdiction by virtue of his or her commission of a crime. (§§ 605, subd. (c), 656, and 656.1.) Upon the filing of a petition, the clerk of the juvenile court must set the matter for hearing as provided by section 657, unless the minor is temporarily detained in the custody of the Probation Department, in which case, a hearing must be set as provided by section 632. Thereafter, at any time prior to the attachment of jeopardy, the prosecuting attorney may move, pursuant to section 707, to transfer an eligible minor to a court of criminal jurisdiction to be tried and, if convicted, punished as though he or she had committed a crime when an adult. (§ 707.) If the motion is denied, the matter proceeds in accordance with juvenile court law and procedure: if the motion is granted, the minor is transferred back to a court of criminal jurisdiction, where proceedings resume precisely where they left off. These procedures are not unduly complex or unworkable, and they were left intact to further the voters' intent and purpose in adoption Proposition 57.

Petitioner correctly points out that Penal Code section 1170.17, enacted in 1999 with Senate Bill 334, was left intact by the voters when they adopted Proposition 57. The statute recognizes that the crimes of which a person is charged are not always identical to the crimes of which he or she is convicted and

permits a post-conviction judicial determination of fitness for juvenile offenders who were not afforded such an opportunity pre-trial. Subdivision (a) of the statute states the general rule that a defendant in a direct-filed case who is convicted of any crime "shall be subject to the same sentence as an adult convicted of the identical offense...." (Pen. Code, § 1170.17, subd. (a).) Subdivisions (b) and (c) and (d) of the statute set forth exceptions. If the defendant was not convicted of any offense which would have made him eligible for transfer to adult court under section 707, then he must be sentenced under juvenile court law. (Pen. Code, § 1170.17, subd. (d).) If he was convicted of an offense which would have made him eligible for transfer, "pursuant to a rebuttable presumption that the person is a fit and proper subject to be dealt with under the juvenile court law," he must be sentenced under juvenile court law, unless the prosecution proves, by a preponderance of the evidence, that the defendant is not a fit and proper subject to be dealt with under juvenile court law, in which case he may be sentenced in the same manner as an adult convicted of an identical offense. Finally, if the defendant was convicted of an offense which makes him eligible for transfer to a criminal court "pursuant to a rebuttable presumption that the person is not a fit and proper subject to be dealt with under the juvenile court law," he must be punished as an adult, unless the defendant proves, by a preponderance of the evidence that "he or she is a fit and proper subject to be dealt with under the juvenile court law" based on the enumerated criteria. (Pen. Code, § 1170.17, subd. (b).) The criteria for determining fitness under Penal Code section 1170.17 are identical to those

section 707, as amended, although the nonexhaustive list of factors to be considered in analyzing each criterion are not articulated in the former.

By leaving this statute intact, the voters recognized the possibility that, on the date the initiative went into effect, trials in some direct-filed cases will have commenced. Jeopardy will have attached, and mid-trial certification of the defendant to juvenile court for a pre-trial judicial determination of fitness will not be feasible. As to such defendants, a postconviction mechanism for obtaining a judicial determination of fitness remains necessary.[10]

E. Policy Considerations Favor A Rule Applying The Amendments To Section 707 Prospectively, Requiring Pre-Trial Certification Of Direct Filed Cases In Which Trial Has Not Commenced To The Juvenile Court And Requiring Post-Trial Judicial Determinations Of Fitness Under Section 1170.17 In Cases In Which Trial Had Commenced As Of November 8, 2016 And The Defendant Was Subsequently Convicted Of A Qualifying Crime

There is no question that, after the adoption of Proposition 57 and resulting amendments to section 707, no juvenile offender may be punished as an adult upon conviction for a crime committed when he was a child unless an individualized judicial determination of his or her fitness to be dealt with as a

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[10] Petitioner concedes that amendments to section 707 apply prospectively to fitness hearings which have not yet occurred. (OBM, p. 40, fn. 8.) There is no reason why such procedures would not also apply in future fitness hearings pursuant to Penal Code section 1170.17. As of November 8, 2016, there is no such thing as an offense which makes a minor subject to a "rebuttable presumption" of unfitness; accordingly, any determination made under section 1170.17 after the effective date of Proposition 57 would have to be made subject to section 707, as amended, with the burden of proving that a minor is not a fit and proper subject to be dealt with under the juvenile court law resting on the People.

juvenile has been made, no presumption of "unfitness" attaches to the commission of any particular offense, and, whether a determination of fitness is made before or after trial, the prosecution bears the burden of establishing that an eligible minor should be punished as an adult for his criminal acts. The question, then, is whether it makes sense, in pending direct-filed cases, to defer these determinations until trial of the matter has concluded and verdicts have been rendered as to all charged offenses. It does not. Such a rule would impose significant burdens on both superior courts and juvenile courts. It would require superior courts to conduct jury trials in all direct-filed cases and then, if a defendant is convicted of a section 707, subdivision (b) offense, conduct a postconviction fitness hearing in the juvenile court prior to sentencing. Whereas a section 707 hearing, even one in which fitness is contested, imposes only a minimal burden on the judicial system, jury trials are quite costly in terms of judicial resources. By requiring that a defendant's fitness be determined pre-trial, this cost would be alleviated. Inevitably some minors, after being found fit to remain in juvenile court, will resolve their cases by admitting the petitions' allegations rather than proceeding to trial. Minors facing harsh adult penalties, such as life in prison, have no incentive to do so.

A second policy consideration favors the Court of Appeal's approach – the importance of a minor's current age when determining fitness. Section 707 requires that the juvenile court, in determining whether a person is a fit and proper subject to be dealt with under juvenile court law, consider "[w]hether the minor

can be rehabilitated prior to the expiration of the juvenile court's jurisdiction"; in other words, before he or she reaches a specified age[11]. (§§ 707, subd. (a)(2)(B)(i), 607.) An adolescent's brain develops with lightning speed[12], and the juvenile court has only a finite time period in which to address the rehabilitative needs of a minor before its jurisdiction over the minor expires. Accordingly, when considering whether a minor "can be rehabilitated prior to the expiration of the juvenile court's jurisdiction," advancement in age can be critical.

The instant case presents an excellent example. Pablo was younger than sixteen when the alleged crimes occurred and had just turned sixteen when he was arrested and a felony complaint against him was filed. By the time his section 707 hearing took place he was seventeen years old. Fortunately for Pablo, Riverside County has ample resources, services and placements for addressing the rehabilitative needs of a seventeen year-old ward of the juvenile court.[13] However, many of those resources, services and placements have an upper age

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[11] Section 607, subdivision (a) states the general rule, permitting the juvenile court to retain jurisdiction over a ward until he or she turns 21. Subdivision (b) permits the court to retain jurisdiction over a person committed to a state facility due to the commission of a section 707, subdivision (b) offense until he or she turns 25.

[12] Arain M, Haque M, Johal L, et al. Maturation of the adolescent brain. Neuropsychiatric Disease and Treatment. 2013;9:449-461. doi:10.2147/NDT.S39776 ["adolescence is one of the most dynamic events of human growth and development, second only to infancy in terms of the rate of developmental changes that can occur within the brain"].)

[13] These resources are summarized in the Declaration of LCSW Monica Baltierra, Attachment A to Real Party's Opposition to Petitioner's Application for Immediate Stay in the Court of Appeal.

limit of eighteen and will not be available to Pablo after February, 2018.[14]

Due to the impact a minor's advancement in age is likely to have on a fitness determination, construing Proposition 57 to require that determinations in cases like Pablo's be delayed until after the minor's guilt has been adjudicated by a jury in a court of criminal jurisdiction will inevitably result in fewer otherwise suitable juvenile offenders being treated and rehabilitated under juvenile court law.[15] Such a result contravenes the expressed purposes of Proposition 57: "[p]rotect[ing] and enhance[ing] public safety, "[s]av[ing] money by reducing wasteful spending on prisons," and "[s]top[ping] the revolving door of crime by emphasizing rehabilitation, especially for juveniles." (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, p. 141.)

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[14] *Ibid.*

[15] The procedures governing felony cases in superior court are protracted in comparison to those which govern section 602 petitions. In adult court, assuming that no hearings are continued and all statutory time requirements are met, trial cannot even commence for several months following the defendant's arrest and arraignment on a felony complaint. (Pen. Code, §§ 859b [preliminary hearing to occur within ten court days of arraignment on complaint], 739 [information to be filed within fifteen days of commitment order], 1382, subdivision (a)(2) [trial on felony charges to commence within sixty days of arraignment on information].) Additionally, juries may be unable to reach unanimous verdicts as to all charged offenses, necessitating additional trials. In contrast, upon the filing of a section 602 petition, a jurisdictional hearing can take place within thirty days, and even sooner in the case of a detained minor. (§ 637.) And the possibility of a hung jury does not exist, as juvenile petitions are tried before a bench officer, not a jury.

F. If This Court Concludes That The Juvenile Law Amendments Of Proposition 57 Do Not Apply To Real Party, The Section 707 Determination Made By The Juvenile Court Should Not Be Vacated

Petitioner urges this court, should it conclude that Proposition 57's juvenile law amendments do not apply here, to "vacate the juvenile-court proceedings," presumably including the juvenile court's finding under section 707 that Pablo is a fit and proper subject to be dealt with under juvenile court law. (OBM, p. 64.) Petitioner contends that the juvenile court acted in excess of its jurisdiction by conducting a hearing as to the section 707 motion filed by the People in a section 602 proceeding which the People initiated. (OBM, p. 64.) While the circumstances under which the People elected to initiative juvenile court proceedings as to Pablo were admittedly unusual, nothing done by the juvenile court was in excess of its jurisdiction.

After the trial court certified Real Party to juvenile court, the People simultaneously filed a petition for a writ of mandate in the Court of Appeal and a section 602 petition in the juvenile court. The filing of that section 602 petition vested jurisdiction over Pablo with the Juvenile Court, which thereafter conducted proceedings as required by law. When the People moved to transfer Pablo to adult court under section 707, the juvenile court ordered the probation department to submit a report, as required by section 707, subdivision (a)(1), and then, following submission of the report and consideration of the report and any other relevant evidence that either party wished to present, decided that Pablo should not be transferred back to a court of criminal jurisdiction and that he is a fit and proper

subject to be dealt with under juvenile court law. Although the People could have sought timely appellate review of that determination, they chose not to.

The juvenile court did not act outside its jurisdiction in conducting proceedings as to the section 602 petition or conducting a hearing and issuing a decision with regard to the People's motion, and its determination as to Pablo's fitness should stand and be controlling as the law of the case, even if this Court issues an order which causes proceedings in the criminal case to be reinstated. Should this court do as Petitioner urges - vacate the juvenile court's pre-trial determination as to Pablo's fitness and require that a new determination be made many months from now, after this case has been fully briefed, argued, and decided and after a jury trial in the adult-court case has concluded - the resulting advancement of Pablo's age and diminution of available suitable resources and placements, without more, could result in a finding of unfitness. Such a result would be manifestly unjust.[16]

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[16] Pablo, who was arrested a month after his sixteenth birthday, has been continuously detained in juvenile hall since March, 2016, due to the yet-unadjudicated criminal charges. Because he is now the subject of a section 602 petition, he is not eligible for bail, and because proceedings in the juvenile court have been stayed, he will remain in juvenile hall until this case is decided; likely, after he has turned eighteen. But for the stay, the juvenile court would have conducted a jurisdictional hearing and, if Pablo was adjudicated guilty of any crimes and declared a ward, ordered that he be placed in a suitable setting or facility for treatment geared toward his rehabilitative needs. It would be unjust for Pablo to wind up being punished as an adult merely because he is the subject of "a test case" brought by the prosecutor and, as a result, "ages out" of the resources and placements available to minors who are wards of the juvenile court.

CONCLUSION

As explained herein, the lower courts correctly applied the juvenile law amendments of Proposition 57 in this direct-filed case which was in a pretrial posture on the initiative's effective date. Consistent with the voters' intent, Real Party was certified to juvenile court, a section 602 petition was filed to adjudge him a ward of the juvenile court, and, after a contested section 707 hearing was conducted, a judicial officer determined that he is a fit and proper subject to be treated as a child for crimes he allegedly committed while a child. This case does not present a scenario of "retroactive" application, and the Court of Appeal's order denying the People's petition should be affirmed.

Dated: 8/1/17

Respectfully submitted,

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By: _____
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CERTIFICATE OF WORD COUNT

I, LAURA ARNOLD, do hereby certify that, according to the computer program used to prepare the instant brief, including headings and footnotes, the length of the brief is 11,177 words.

I declare the foregoing to be true under penalty of perjury. Executed this 1st of August, 2017, Murrieta, California.

LAURA ARNOLD

Declaration of Service
(C.C.P. 1013a and 2015.5)

People v. Superior Court (*Lara*)
Docket Number: S241231

I am a citizen of the United States and a resident of the county of Riverside, State of California. I am over the age of 18 years and not a party to the within action. I am employed by the Law Offices of the Public Defender and am familiar with the business practice at the Office for collection and processing of correspondence for mailing with the Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Law Offices of the Public Defender is deposited with the United States Postal Service, with postage fully paid, that same day in the ordinary course of business.

On the date of execution of this document, I served the foregoing Real Party In Interest's Answering Brief On The Merits electronically, to the following parties and/or their attorneys:

Donald Ostertag, Attorney for Petitioner at Appellate-unit@rivcoda.org

Riverside County Superior Court at appealsteam@riverside.courts.ca.gov

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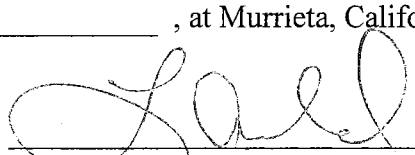
Pablo Lara, Jr., through trial counsel, Steven S. Mitchell, at mitchellaw4u@gmail.com

Fourth District Court of Appeal, Division Two, through Truefiling, Case E064099

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

Executed on August 1, 2017, at Murrieta, California.



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