The Rise and Fall of the Juvenile Superpredator: How Proposition 21 Changed the Face of Juvenile Justice

Beyond the Bench 23:User Experience
Anaheim, California
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Excerpt from Ballot Argument in Favor of Proposition 21: The Gang Violence and Juvenile Crime Prevention Act of 1998

Proposition 21 doesn't incarcerate kids for minor offenses—it protects Californians from violent criminals who have no respect for human life. Ask yourself, if a violent gang member believes the worst punishment he might receive for a gang-ordered murder is incarceration at the California Youth Authority until age 25, will that stop him from taking a life? Of course not, and THAT'S WHY CALIFORNIA POLICE OFFICERS AND PROSECUTORS OVERWHELMINGLY ENDORSE PROPOSITION 21.

Proposition 21 ends the ''slap on the wrist'' of current law by imposing real consequences for GANG MEMBERS, RAPISTS AND MURDERERS who cannot be reached through prevention or education. Californians must send a clear message that violent juvenile criminals will be held accountable for their actions and that the punishment will fit the crime. YOUTH SHOULD NOT BE AN EXCUSE FOR MURDER, RAPE OR ANY VIOLENT ACT—BUT IT IS UNDER CALIFORNIA'S DANGEROUSLY LENIENT EXISTING LAW.

What the Voters Decided on a Yes/No Vote on Prop 21

§3 Expands criminalization of gang activity
§4 Enhances sentences for gang related crimes
§5-6 Increases penalties for coercion to participate in gangs
§7-10 Adds gang registration requirements
§11 Expands of what constitutes capital murder
§12 Increases penalties for vandalism
§13 Expands provisions for wiretapping
§15 Expands list of violent offenses for sentencing enhancement ("strikes")
§17 Expands list of felonies as strikes & prohibition on plea bargaining
§18 Allows automatic prosecution of specified juveniles in adult court at age 14
§19 Expands reporting juveniles to Department of Justice criminal records
§ 20 Expands offenses for mandatory initial detention of youth

(Continued on next slide)

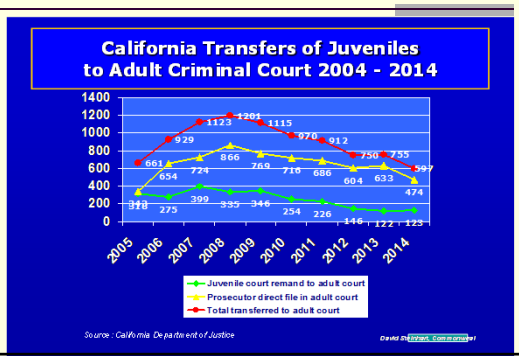
What Voters Decided on a Yes/No Vote on Prop 21 (Continued)

§ 21 Adds conditions for release from custody
§ 22 Limits on eligibility for informal supervision (W & I 654.2)
§ 23 Weakens notice requirements for serving juvenile court petitions
§ 24 Eliminates reasonable efforts requirement before issuing of warrant
§ 25 Reduces protections for confidentiality in juvenile hearings
§ 26 Expands ages/offenses for presumed unfitness; allows direct filing in adult court
§ 27 Eliminates notice requirement & weakens proof needed in supplemental petitions
§ 28 Eliminates discretion to allow record sealing in 707(b) cases
§ 29 Adds deferred entry of judgment if the youth admits a felony & gives up trial rights
§ 30 Expands law enforcement disclosure of information to public on juvenile cases

Bad Timing: Developments Shortly Before and After Prop 21 Was Passed

- Violent juvenile crime dropped in the mid-1990's and that trend continues to the present
- Research established that:
  - ✓ Youth sent to adult system recidivate faster & for more serious crimes
  - ✓ Extended incarceration produces diminished returns
  - ✓ Healthy development calls for strong, supportive relationships with adults, prosocial activities & opportunities to exercise judgment & learn skills
  - ✓ Youth who escape formal court processing do better than comparable youth who are formally processed
- Four Supreme Court cases recognized that youth:
  - ✓ Are not deterred by prospect of severe punishment
  - ✓ Are less culpable because of developmental level
  - ✓ Have the capacity to change and usually do

Transfer to Adult Court After Proposition 21



Data on DJJ Population and Transferred Youth Committed to State Prison in 2014

Division of Juvenile Facilities Population*
Homicide 67 (12.5%)
Robbery 172 (32.0%)
Assault 180 (33.5%)
Burglary 24 (4.5%)
Rape (Forcible) 10 (1.9%)

State Prison Commitments of Juveniles Tried as Adults in 2014 (of 351 dispositions)
Homicide 27
Robbery 65
Assault 77
Burglary 7
Rape 5

*Department Of Corrections And Rehabilitation, Division of Juvenile Justice, Population Overview as of December 31, 2014
** Department of Justice, *Juvenile Justice in California 2014*, Table 33

Kids in the hall: Among the Bay Area youths fighting Prop. 21 are the members of Third Eye Movement — (from right) director Jasmin Smith, Maria Cordero, Jesse Osserio, Ursula Abrahamian, Emmy Bagshaw, Pecolia Manigo, Jasmine Meilleur, Margot Goldstein, Jiwee Kim, Julie Browne, and Ying-Sun Ho.

Fighting the fearmongers

Pete Wilson is trying to incarcerate a generation of California kids. In the process, he's turning them into organizers. *By A. Clay Thompson*

San Francisco Chronicle

EDITORIALS — THE VOICE OF THE WEST

Troubling Trend Toward Trying Youths as Adults

IN AN effort to head off March voter approval of an excessive juvenile crime initiative sponsored by former Gov. Pete Wilson, California now has on the books a Democratic version of get-tough-on-young-criminals legislation.

Led by Senate President Pro Tem John Burton of San Francisco, Democrats pushed through a bill, signed last week by Gov. Davis, that allows more juvenile offenders to be tried as adults. The measure is considerably milder than the Wilson initiative, but it still moves in a troubling direction that assumes that society and the offenders will be better off if more teens are sexually assaulted, beaten and attacked with a knife than they would have been in a juvenile detention center.

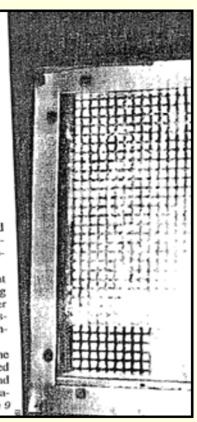
A new law is a pre-emptive strike against Pete Wilson's juvenile crime measure on the March ballot.

The new law requires that minors 16 and older who have been convicted of a previous felony be prosecuted in adult criminal court. The law, written by Sen. Dede Alpert, D-San Diego, is certainly far more humane than Wilson's initiative that would give prosecutors authority to try juveniles 14 and older as adults in murder cases and other violent crimes without first getting permission from a judge. It also would permit the death penalty for offenders over 18 in gang-related cases.

But Alpert's bill also takes discretion away from judges

Growing Pains in Juvenile Justice

Measure raises stakes for teen offenders, reduces judges' power



By DENNIS J. OPATRNY

Backers of a get-tough juvenile justice measure that would give prosecutors new authority failed to muster legislative support last year. But they'll be back in 2000, taking their controversial reforms directly to voters.

The March primary election ballot will contain a measure that would dramatically change the way California deals with young criminals, ranging from the neighborhood bike thief to the inner city gangbanger. Provisions would transfer from judges to prosecutors the authority to make key decisions in juvenile cases, including whether young offenders should be tried as adults.

The initiative is probably the most significant tough-on-crime proposal since Three Strikes. Prosecutors say the law is needed to address the serious crimes committed by gang members and other teens, and that it will make it easier for the courts to sepa-

See JUVENILE page 9

SF Daily Journal p. 3, col. 1
9/14/99

CALIFORNIA

LEGISLATION

Juvenile Crime Bill Called Harsh Medicine

■ Democrats sign on to a measure aimed at derailing an even harsher ballot initiative.

By Peter Blumberg
Daily Journal Staff Writer

SACRAMENTO—In a last-ditch bid to head off a sweeping juvenile justice ballot initiative placed by former Republican Gov. Pete Wilson on the March 2000 ballot, Democratic lawmakers uncharacteristically have approved a bill that some are calling the toughest juvenile crime package ever to come out of the Legislature.

With little fanfare as they hustled to adjourn for the year on Friday, lawmakers passed an omnibus measure that is much heavier on punishment than on rehabilitation. It would significantly increase the number of teens tried as adults, broaden victim rights and restitution requirements and peel back some of the confidentiality of juvenile proceedings and records.

The measure, SB334, does not go as far as the prosecutor-backed ballot initiative, which Wilson helped to qualify for the ballot after Republican legislators became frustrated watching their juvenile crime bills get bottled up in Democrat-controlled committees. But it goes far enough that even conservative Republicans enthusiastically supported it.

"This will take us a significant step forward in the punishment realm," said Assemblyman Rod Pacheco, R-Riverside, a former deputy district attorney who signed on as the bill's co-author.

But most of the bill would be overridden if the initiative passes, which Capitol insiders say is likely given the general popularity of tough-on-crime measures such as the 1994 "three strikes, you're out" sentencing initiative. Some analysts are saying the new initiative, which also targets gang activity, will affect criminal justice in California nearly as broadly and dramatically as the "three strikes" law.

Although SB334 lead author Dede Alpert, D-San Diego, and other Democrats said they hope that enacting the bill will persuade the public there's no need for Wilson's "Gang Violence and Juvenile Prevention Act," child advocacy groups and the criminal defense bar are pressing Democratic Gov. Gray Davis to veto the bill as they gear up to campaign against the initiative.

'This will take us a significant step forward in the punishment realm.'
Assemblyman Rod Pacheco, R-Riverside

"For the first time in California history, the decision on whether to transfer a juvenile into adult court for prosecution would be based on legislative fiat in lieu of judges making case-by-case determinations," said Los Angeles attorney Lisa Greer, a spokeswoman for the California Public Defenders Association. "It's a major policy shift away from judicial discretion, away from looking at kids as individuals and away from the human aspects of a case toward looking at them as statistics, as a crime category."

The last-minute passage of Alpert's bill Friday, just hours after it was heard in its only Senate committee public hearing in final form, was fraught with irony.

On the one hand, Alpert was forced to express disappointment to her colleagues that the bill had been stripped, at Davis' request, of almost all its $150 million in funding for prevention and intervention programs — the very purpose of the bill in the first place.

On other hand, the California District Attorneys Association, which helped Wilson draft the initiative, said it would remain neutral on SB334 in part because it's not tough enough, but also because the bill is missing a vital provision for helping to separate wayward youths from hard-core repeat offenders. CDAA Deputy Director David LaBahn pointed to a mechanism in the initiative called "deferred entry," which was amended out of Alpert's bill, that allows youths who do not commit violent crimes to avoid the juvenile justice system altogether if they admit wrongdoing for minor offenses and stay out of trouble.

"That's one change that could impact the flow of cases into juvenile court," he said.

But the most controversial element of the Alpert bill and the Wilson initiative is the expansion of prosecutors' discretion to transfer juveniles to adult court.

Under current law, any minor age 16 or older may be transferred to adult court for any crime if a juvenile judge finds the minor unfit for juvenile court. Juveniles as young as 14 can be transferred to adult court if they are

See JUVENILE, Page 10

Serving the Bay Area Legal Community Since 1893
SAN FRANCISCO
Daily Journal
Monday, December 13, 19
No. 240

PREVENTING OR ABETTING CRIME?

Proposition 21 Cracks Down Hard on Young Teens Who, Critics Say, Will Become Criminals If They Are Imprisoned With Adults

By John Roemer
Daily Journal Staff Writer

Opponents scornfully call it "Three Strikes for Tykes." Proposition 21, the "Gang Violence and Juvenile Crime Prevention Act," is drawing vehement opposition as the campaign over the March ballot initiative gears up.

"It targets middle-schoolers," objected Susan L. Burrell, a staff attorney at the Youth Law Center in San Francisco. "And it's completely false to put the word 'prevention' in the title."

[illegible] to pass another tough-on-crime measure in California — even one that targets children at a time when crime is declining nationwide.

"All we're trying to do here is to clear the worst of the worst out of the juvenile system," said David LaBahn, deputy executive director of the California District Attorneys Association.

Last week Sacramento County Superior Court Judge James T. Ford ordered both sides to tone down misleading arguments that will appear in the official voters' handbook.

The initiative is a 43-page rewrite of dozens of state laws from the penal and welfare and institutions codes. It cracks down hard on errant 14- to 17-year olds.

Among other provisions it transfers from judges to prosecutors the decision to try juveniles as adults on some charges. The California Judges Association is currently evaluating the proposal and has yet to take a position on it, a spokesman said.

Proposition 21 also mandates tougher penalties for home-

CRIMINAL LAW
1/31/2000, p. 1, col. 2 San Francisco Daily Journal

Gov. Davis Endorses Tough Juvenile Crime Initiative

■ And, breaking ranks, L.A.'s police chief, arguing it would be counter-productive, says he opposes the measure.

By Peter Blumberg
Daily Journal Staff Writer

SACRAMENTO — With little campaign cash to spend, the battle over the March 7 juvenile justice ballot initiative has become a popularity contest for big-name endorsements.

The opponents of the sweeping anti-crime measure announced early Friday that Los Angeles Police Chief Bernard Parks will soon join their list of backers.

Hours later, the proponents scored a coup of their own: a thumbs-up from Gov. Gray Davis.

A spokesman for the yes on Proposition 21 campaign, Matt Ross, said the combination of support from former Republican Gov. Pete Wilson and the Democratic governor indicates "strong bipartisan" backing for the initiative.

The head of the opposition, San Francisco attorney David Steinhart, said Davis' announcement was not surprising in light of his tough-on-crime campaign stance, but was disappointing.

"He may be the only Democratic politician in the state who is in favor of Proposition 21. He is all alone on this one," Steinhart said. "When he campaigned for the governorship, his view of

■ California's juvenile court judges vote to oppose Proposition 21. *See Page 2*

the perfect model was Singapore justice, where kids are caned for minor offenses. Gray Davis has a lot to learn about preventing juvenile crime."

Davis spokesman Michael Bustamante said Friday the Singapore comment was unfair, and he emphasized that the governor's fundamental concern is to make California streets safer.

"He wasn't talking about caning kids; he was talking about a system of justice that has specific, clear punishments for crimes," Bustamante said. "Public safety has been and will continue

[illegible] amassed going into the final six weeks before the statewide vote.

After qualifying the measure for the ballot back in 1998 with several hundred thousand dollars in assistance from major corporations,

Proposition 21 proponents now have $6,000 cash in the bank and outstanding debts of $36,000.

Opponents reported a cash balance of $60,000, including $27,000 raised in the first three weeks of January.

Neither side says it can afford to run ads on television, so the campaign will hinge largely on reaching voters through means such as ballot pamphlets, political mail and newspaper editorials.

"We really believe this is a grass-roots campaign," Ross said. "It's going to be led by law enforcement, prosecutors and crime victims who deal with this issue on a daily basis. They will lead the charge to victory on March 7. They are the ones writing the letters to the editor and talking with members of various associations to get us more support."

Steinhart agreed that much of the campaign will be conducted by word of mouth.

"Unless someone is lying in wait that we don't know about and they don't know about you're going to see it played out as a low-budget campaign," he said.

SCOTT WINOKUR

SF Examiner 2/23/00 A-19- col. 2

Prop. 21's vengeance: Cruel and costly

PROPOSITION 21 is visceral justice — the gut as judge and jury. There is no brain in it and certainly no heart.

The measure — which would require more juvenile offenders to be tried as adults and put more of them in adult correctional facilities — is former Gov. Pete Wilson's sorry legacy.

It is an artifact of a time when Californians feared the masses of black, brown and yellow youths in its cities.

When it was politic to be tough as hell on crime.

When the state still refused to recognize and embrace its own future.

Have you heard the news? Crime has gone down since then.

Tragedy, on the other hand, knows no season.

Earlier this month, a 15-year-old Aboriginal youth in an Australian jail hanged himself in his cell, using his bedsheets. The boy had been serving a 28-day sentence for stealing pencils.

Reminded me of the Texas case 10 years ago where a kid in the slammer overnight on something trivial was beaten to death.

And the Ohio case where a naughty girl whose parents wanted to teach her a lesson was raped in jail during Mommy's and Daddy's disciplinary one-night stand.

Are we better than the Taliban? Isn't there some part of us that wants to chop off hands and stone evildoers?

I think there is — and the proponents of Prop. 21 have to hope it will be that force, that Biblical and Komisic drive for vengeance, that makes us mark the ballot in favor of the measure next Tuesday.

I have next to no compassion for the young punks who get heavily into crime, especially violent crime.

SCOTT WINOKUR

Scott Winokur is an Examiner reporter. More of his columns are online at www.examiner.com/winokur/

What concerns me about Prop. 21 — even more than its whopping $1.5 billion price tag — is the message it sends to the vast majority of kids who aren't over the line, whose worst offense may be to smoke a joint or flip an illegal U-turn.

Prop. 21 says mess up and your life is pretty much over. It says adults can be as mean and cold-blooded toward you as they are toward each other. I don't think of myself as a softie, but I'm not prepared to say that to the 9 million Californians under age 18.

"The problem with Prop. 21 is that it takes a whole group of kids who aren't misdemeanants but aren't as murderers either, and it makes it a lot easier to try them as adults," said Sue Burrell, an attorney with San Francisco's Youth Law Center.

"This started out as part of Pete Wilson's bid for the presidency. He stated that this was going to be a big plank of his national presidential campaign, getting tough on juvenile crime.

"This was at the end of 1997, the beginning of 1998. So this is all old stuff. Really, crime started going down pretty much across the board in 1995."

According to Burrell, 70 percent of the kids who commit crimes never are seen again by the juvenile justice system.

Sure, many doubtlessly get too old to be prosecuted as juveniles, so that's why they don't reappear in kiddie courts. But many wise up. It would be criminal to pass a law that effectively deprives these youths of the opportunity for a fresh start.

"The proposition just completely revolutionizes the juvenile justice system in California. It's a take-it-or-leave-it measure," Burrell said.

"When you're looking at any fundamental change in a system like this, you need to take it one step at a time and have a public debate. What this does is ram everything the proponents could think of into 43 pages. It's a terrible way to make social policy."

San Francisco Daily Journal
2/2/2000, p. 1, col 4

CRIMINAL JUSTICE

Law Enforcement Is Divided On Merits of Proposition 21

■ The tough juvenile measure, sponsored by Pete Wilson, is seen by some DAs and cops as unnecessary and too harsh.

By Peter Blumberg
Daily Journal Staff Writer

SACRAMENTO — The many factions of California's criminal justice establishment met Tuesday in a lively Capitol debate over Proposition 21, the juvenile and gang violence initiative slated for the March 7 ballot.

Not surprisingly, key proponents of the sweeping anti-crime measure spearheaded by former Gov. Pete Wilson included a working juvenile prosecutor, the leaders of the California District Attorneys Association and the head of the state's most prominent crime victims group.

So what about the Los Angeles police commander, the San Francisco prosecutor, the Santa Cruz probation officer and the San Diego juvenile court judge who spoke out at Tuesday's hearing before a joint legislative committee?

They're with the opposition.

"We made a point of trying to tell the world that law enforcement support for Proposition 21 is not monolithic," said San Francisco attorney David Steichart, who is leading the opposition campaign. "There are some rifts."

Los Angeles Police Chief Bernard Parks, for instance, has broken ranks with the California Police Chiefs' Association to publicly oppose the ballot measure.

Parks' legislative advocate, Cmdr. Dan Koenig, cited specific problems with Proposition 21's provision allowing prosecutors to file charges against juveniles directly in adult court and another provision requiring convicted

See JUVENILE, Page 8

San Francisco Chronicle
THE VOICE OF THE WEST

10/18/99

A20 ***

EDITORIALS

Troubling Trend Toward Trying Youths as Adults

IN AN effort to head off March voter approval of an excessive juvenile crime initiative sponsored by former Gov. Pete Wilson, California now has on the books a Democratic version of get-tough-on-young-criminals legislation.

Led by Senate President Pro Tem John Burton of San Francisco, Democrats pushed through a bill, signed last week by Gov. Davis, that allows more juvenile offenders to be tried as adults. The measure is considerably milder than the Wilson initiative, but it still moves in a troubling direction that assumes that society and the offenders will be better off if more teens are tried as adults.

A new law is a pre-emptive strike against Pete Wilson's juvenile crime measure on the March ballot.

More often than not, trying and convicting a youngster in adult courts serves no one. Treating young criminals as tantamount to writing them off. Adult prisons do not tend to differentiate between young offenders and lifetime violent predators. Any instruction a young person gets in prison is more likely to turn him into a hardened criminal rather than a candidate for productive citizenship.

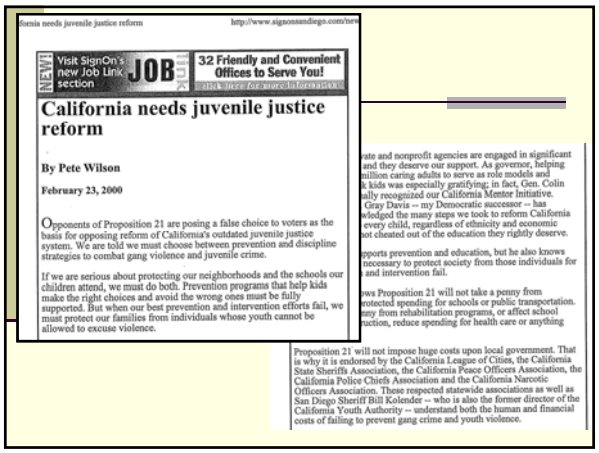
In states that have substantially expanded juvenile transfers to adult court, the recidivism rate for youthful offenders has risen. Young inmates also are more likely to be sexually assaulted, beaten and attacked with a knife than they would have been in a juvenile detention center.

The new law requires that minors 16 and older who have been convicted of a previous felony be prosecuted in adult criminal court. The law, written by Sen. Dede Alpert, D-San Diego, is certainly far more humane than Wilson's initiative that would give prosecutors authority to try juveniles 14 and older as adults in murder cases and other violent crimes without first getting permission from a judge. It also would permit the death penalty for offenders over 18 in gang-related cases.

But Alpert's bill also takes discretion away from judges in determining who may be tried as an adult and who would benefit from the more forgiving and hopeful juvenile justice system.

The strategy of Burton, Alpert and other Democrats is understandable. The initiative process can thrive on fear-mongering, and it would be advantageous to have an alternative to Wilson's overreaching measure.

But it is a shame that the need to pander to the law-and-order crowd is resulting in the dismantling of a juvenile justice court system that for the most part works.



fornia needs juvenile justice reform http://www.signonsandiego.com/new

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California needs juvenile justice reform

By Pete Wilson

February 23, 2000

Opponents of Proposition 21 are posing a false choice to voters as the basis for opposing reform of California's outdated juvenile justice system. We are told we must choose between prevention and discipline strategies to combat gang violence and juvenile crime.

If we are serious about protecting our neighborhoods and the schools our children attend, we must do both. Prevention programs that help kids make the right choices and avoid the wrong ones must be fully supported. But when our best prevention and intervention efforts fail, we must protect our families from individuals whose youth cannot be allowed to excuse violence.

ate and nonprofit agencies are engaged in significant and they deserve our support. As governor, helping illion caring adults to serve as role models and k kids was especially gratifying; in fact, Gen. Colin ally recognized our California Mentor Initiative. Gray Davis -- my Democratic successor -- has bledged the many steps we took to reform California every child, regardless of ethnicity and economic ot cheated out of the education they rightly deserve.

pports prevention and education, but he also knows necessary to protect society from those individuals for and intervention fail.

ws Proposition 21 will not take a penny from rotected spending for schools or public transportation. ney from rehabilitation programs, or affect school uction, reduce spending for health care or anything

Proposition 21 will not impose huge costs upon local government. That is why it is endorsed by the California League of Cities, the California State Sheriffs Association, the California Peace Officers Association, the California Police Chiefs Association and the California Narcotic Officers Association. These respected statewide associations as well as San Diego Sheriff Bill Kolender -- who is also the former director of the California Youth Authority -- understand both the human and financial costs of failing to prevent gang crime and youth violence.

The Sacramento Bee

WEDNESDAY

February 16, 2000

Proposition 21: Pete Wilson and the ghosts of politics past

PETER SCHRAG

Two years ago, as his second term was ending, Gov. Pete Wilson, who may always be best remembered as the man who led the initiative campaigns to end affirmative action and to drive illegal immigrant kids out of California's schools, was working hard to qualify three more measures for the state ballot.

One, Proposition 226, which would have required labor organizations to get annual permission from each member before dues could be withheld and used for political purposes, was defeated in June 1998. A second, Proposition 8, a knotty school reform measure, was trounced in November 1998. The third, Proposition 21, the Gang Violence and Juvenile Violence Prevention Act, will be on the March ballot. If anything in politics resembles Dracula rising from the grave, this could be it.

Proposition 21 has many parts, but its major thrust is to make it easier – and in some cases mandatory – to try some 14-

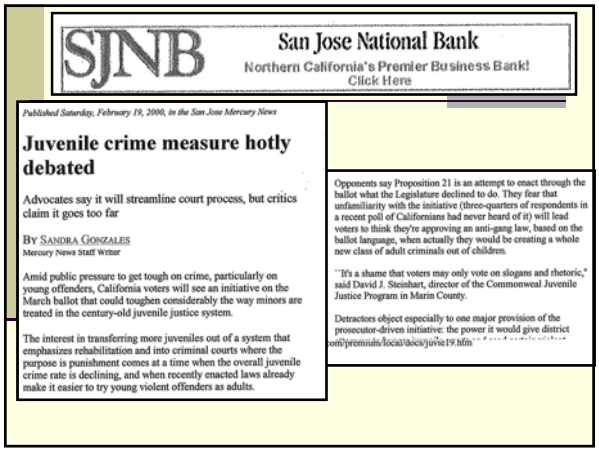
until this March, when Wilson might have been on the ballot? Zach says the Wilson staff very much wanted to qualify the measure for November 1998, but simply ran low on funds at a time when the other initiatives had a higher priority.

There certainly can't be many ballot measures on which the most visible sponsor of the signature campaign is almost invisible in the general election – and when $1 million is spent to qualify something but there's only peanuts in the till to get it passed. Zach says this will be a "grass-roots campaign" conducted mostly by the sheriffs and DAs – and that the voters, reading the ballot title and summary, will go for it, just as they did for Proposition 184, the Wilson-backed "three strikes" initiative, back in 1994. Indeed, Zach seems to regard it as a sort of junior three strikes, something that opponents are trying to dismiss as unnecessary and too expensive, but which the majority of voters, recognizing the "the violent gang problem," will support.

21 was dubious anyway. But in this case, the changing political climate and the declining crime figures make Proposition 21 look even more like the ghost of politics past.

Wilson, a political moderate, became governor on a strong, positive note focused on prevention and improved children's services. But when the economy turned sour, he turned to wedge issues: the ill-disguised immigrant bashing; the attacks on labor and on the affirmative action policies that he himself had once championed; and, as always, the refrain that he could be tougher on crime than anybody else.

When won re-election in 1994 on the backs of his wedges. But in re-energizing the labor vote in California and in driving a growing Latino electorate away from his party, he was something of a disaster for the GOP. Two of his last three initiatives failed; even if this one passes, it's hardly something to carve in the history books. In better times – or



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Published Saturday, February 19, 2000, in the San Jose Mercury News

Juvenile crime measure hotly debated

Advocates say it will streamline court process, but critics claim it goes too far

BY SANDRA GONZALES

Mercury News Staff Writer

Amid public pressure to get tough on crime, particularly on young offenders, California voters will see an initiative on the March ballot that could toughen considerably the way minors are treated in the century-old juvenile justice system.

The interest in transferring more juveniles out of a system that emphasizes rehabilitation and into criminal courts where the purpose is punishment comes at a time when the overall juvenile crime rate is declining, and when recently enacted laws already make it easier to try young violent offenders as adults.

Opponents say Proposition 21 is an attempt to enact through the ballot what the Legislature declined to do. They fear that unfamiliarity with the initiative (three-quarters of respondents in a recent poll of Californians had never heard of it) will lead voters to think they're approving an anti-gang law, based on the ballot language, when actually they would be creating a whole new class of adult criminals out of children.

"It's a shame that voters may only vote on slogans and rhetoric," said David J. Steinhart, director of the Commonweal Juvenile Justice Program in Marin County.

Detractors object especially to one major provision of the prosecutor-driven initiative: the power it would give district

om/premium/local/docs/juvie19.htm

CRIMINAL LAW

p2, col. 2, 1/31/2000 SF Daily Journal

Juvenile Judges Come Out Against Proposition 21

■ They say they know better than prosecutors when young offenders belong in the adult court system.

By Bob Egelko
Associated Press

In an unusual action, juvenile court judges in California voted to oppose Proposition 21, an initiative allowing prosecutors rather than judges to decide whether many youths are tried as adults.

In a recent poll of the state's 227 juvenile court judges, 71 voted to oppose the measure, three voted to support it and 11 recommended a neutral position. The rest did not respond.

The results were reported Friday by the California Judges Association, whose executive board will decide whether to take a formal position on the March 7 ballot measure at a meeting Feb. 19. The association represents nearly all of the state's 1,500 judges.

Proposition 21 would allow prosecutors to file charges in adult court against defendants as young as 14 who are accused of serious crimes.

Currently those cases can be filed in adult court only if a juvenile court judge decides the defendant doesn't belong in the juvenile system, based on factors such as the seriousness of the charge and the defendant's record.

Minors can be sentenced in juvenile court to confinement only until age 25, but are subject to regular criminal sentences in adult court, up to life in prison.

Proposition 21 would also reduce confidentiality in juvenile courts, expand the three-strikes law, increase punishment for gang-related crimes — including the death penalty for a gang-related murder committed by an adult — and require youths convicted of gang-related crimes to register with police.

Judges ordinarily take no position on ballot measures. But juvenile court judges have more leeway because of court rules requiring them to take active roles in their communities to reduce and prevent delinquency, said Rob Waring, a legal adviser to the Judges Association.

Juvenile court judges believe "they are in a better position than anyone else to decide which kids can be saved and rehabilitated and which kids are beyond that point," and that prosecutors do not have the same "neutrality and objectivity," Waring said.

He said the judges are also concerned that the sweeping measure would be too hard to change if problems arose after passage. A two-thirds legislative vote would be required for amendments.

Mitch Zak, spokesman for the Yes-on-22 campaign, said he understood the judges' concerns but disagreed with them.

Allowing prosecutors to bypass juvenile court hearings is "a necessary element to streamlining the court system and to send a clear signal to violent juvenile offenders that youth is no excuse for rape and murder," he said.

If those cases are sent to adult court, Zak said, "we believe [the judges] will have more time to adjudicate cases that belong in juvenile court."

Sacramento Bee OPINION

Monday, February 14, 2000 B4

No on Proposition 21

Juvenile jail spending robs education and prevention

No on Proposition 21

Juvenile jail spending robs education and prevention

California locks up more of its children per capita than any other state. 498 for every 100,000 10- to 17-year-olds in the state. That's almost twice the national average juvenile incarceration rate of 269 per 100,000.

Despite that — and despite the fact that the rate of juvenile felony arrests declined 30 percent in California between 1991 and 1998 and juvenile homicides have dropped 50 percent — Proposition 21 on the March ballot would increase lockup rates for juvenile offenders. The measure is overly harsh, it's expensive and, in the end, it's likely to produce more violent youth and so diminish public safety.

Among other things, Proposition 21, the Juvenile Crime Initiative, mandates that 14-year-old children accused of murder or rape be tried as adults. It would require that 16-year-olds convicted of serious crimes in adult court be sentenced to adult prisons. It would require convicted gang members to register with police.

The fact is that most 14-year-old murderers and violent sex offenders are tried as adults now. This measure denies judges even the opportunity to examine a ninth-grader's past history and the circumstances of the crime to determine if she is mentally impaired or immature and therefore not suitable for adult court. A judge would no longer be able to decide whether a delinquent 10th-grade boy is likely to benefit from treatment and educational opportunities available at the California Youth Authority but not in adult prison. It would suspend the powers of prosecutors, while further restricting the authority of judges to do what the public elects them to do — make impartial judgments.

THE BEE RECOMMENDS 2000

The proposition would lock up more young offenders for longer periods, increasing costs to state and local government by hundreds of millions of dollars a year, according to the official ballot fiscal analysis. Capital costs for the construction of more prisons and jails needed could reach $1 billion. There is no revenue source in the measure to reimburse cities, counties or the state for the increased costs.

Opponents, including Los Angeles Police Chief Bernard Parks and the Chief Probation Officers of California, oppose Proposition 21 because it would reduce already inadequate funding for crime prevention efforts, including after-school programs, mental health and drug counseling and education.

Gang provisions in the measure would pose special dangers to minority communities, who have complained justifiably that their young men are frequently mislabeled gang members by police. Under Proposition 21, a gang member who commits even a misdemeanor would be required to be sentenced to a minimum of 180 days in jail.

The Legislature wisely rejected this measure when Gov. Pete Wilson proposed it two years ago. Wilson then spent his own political campaign funds to qualify it for the ballot.

Proposition 21 is a politically cynical, wasteful, overly harsh and misguided measure. Vote No on Proposition 21.

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Posted at 6:27 p.m. PST Wednesday, January 19, 2000

Crackdown on kids?

Vote no on Prop. 21 -- state laws are already tough, and it could lock up teens who just made a mistake

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The Legislature turned him down flat. So the governor turned to the voters. He turned his package of crime bills into a ballot measure, which qualified for the March 7 ballot as Proposition 21, the Gang Violence and Juvenile Crime Prevention initiative.

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SF Examiner 2/29/00 A-19 - col. 2

SCOTT WINOKUR

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When it was politic to be tough as hell on crime.

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Are we better than the Taliban? Isn't there some part of us that wants to chop off hands and stone evildoers?

I think there is — and the proponents of Prop. 21 have to hope it will be that force, that Biblical and Koranic drive for vengeance, that makes us mark the ballot in favor of the measure next Tuesday.

I have next to no compassion for the young punks who get heavily into crime, especially violent crime.

What concerns me about Prop. 21 — even more than its whopping $1.5 billion price tag — is the message it sends to the vast majority of kids who aren't over the line, whose worst offense may be to smoke a joint or flip an illegal U-turn.

Prop. 21 says mess up and your life is pretty much over. It says adults can be as mean and cold-blooded toward you as they are toward each other. I don't think of myself as a softie, but I'm not prepared to say that to the 9 million Californians under age 18.

"The problem with Prop. 21 is that it takes a whole group of kids who aren't misdemeanants but aren't ax murderers either, and it makes it a lot easier to try them as adults," said Sue Burrell, an attorney with San Francisco's Youth Law Center.

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Scott Winokur is an Examiner reporter. More of his columns are on-line at www.examiner.com/winokur/

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BAY AREA — San Francisco Chronicle A15

50 Arrested in Oakland Protest Against Prop. 21

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San Francisco Chronicle
THE VOICE OF THE WEST

TUESDAY, FEBRUARY 22, 2000

EDITORIALS

How Not to Treat Juvenile Offenders

PROPOSITION 21 on the March 7 ballot will not cut juvenile crime.

The politically-inspired measure, the brainchild of former Gov. Pete Wilson when he was considering a run for president, would only ensure that young criminals leave prison more hardened than ever and more likely to commit crimes again.

The measure would try more 14-year-olds as adults, put more teenagers in prisons and jails, extend the flawed "three strikes" law and recklessly expand the definition of gang offenses.

Besides being harmful and writing off young people who might otherwise straighten out in the more rehabilitative juvenile justice system, these changes are totally unnecessary. The Legislature in recent years has passed a number of laws lengthening sentences and making it easier to pursue adult court prosecutions of teenagers as young as 14 who commit violent crimes. When Wilson couldn't get his juvenile justice overkill bill passed by lawmakers, he put it on the ballot.

More than 90 percent of 14- and 15-year-olds who commit violent felonies already are sent to adult court through current procedures, thus blunting any argument that the worst juvenile offenders are receiving lenient treatment. Supporters contend that the change is needed to eliminate unnecessary hearings.

Proposition 21 would remove discretion from juvenile court judges to determine whether young offenders are tried in the juvenile or adult court systems. Besides being free of the political pressure that district attorneys often face to press the most severe charges, judges consider a youngster's delinquent history, mitigating or aggravating circumstances and a wide range of other factors, as well as the police report. A D.A. typically only considers the police report.

But Proposition 21 is not just about making it easier for prosecutors to try teenagers as adults. It proposes sweeping changes to juvenile and adult justice laws that dangerously expand prosecutorial powers and erode a century-old juvenile justice philosophy that makes a distinction between the emotional and intellectual development and judgment of children and adults.

Proposition 21 would open up confidential files and prevent sealing those of violent offenders. It would also make it easier to release the names of juveniles suspected of or arrested for committing a serious felony. It adds a number of crimes to the "three-strikes" law, it lowers the damage threshold for felony graffiti from $50,000 to $400 and it eliminates sentencing options for youthful offenders.

CAMPAIGN ★ 2000 ★
The Chronicle Recommends

Some of the most over-reaching provisions have to do with gang activity. A gang member could be charged with conspiracy to commit a felony if his gang committed a crime even if the youth had no part in planning or carrying out the illegal deed. Under current law, gang members may be charged with conspiracy when they have conspired to commit a felony, a law that is more specific and just.

A gang member convicted of a misdemeanor such as drinking in a public place with other gang members would be required to serve at least six months in juvenile hall or jail. The measure also would require registration of people convicted of gang-related crimes despite a huge gang database already.

Proposition 21 does nothing to further the 10-year decline in crime, including violent crime by juveniles. Instead, it sends kids who have a chance at turning around their troubled young lives in the juvenile system to a scary and brutal adult system that teaches them how to survive in prison but not how to make it in the outside world.

The estimated cost of the measure is about $1 million in onetime costs and potential annual costs of more than $400 million. That money could be much better spent on prevention and early intervention efforts, as well as on personnel and training, mental health and counseling programs at existing juvenile detention centers.

San Francisco Chronicle

EAST BAY
AND THE REGION

TUESDAY, FEBRUARY 23, 2009

50 Arrested Demonstrating Against Prop. 21

Sit-in blocked doors of Oakland Police Dept.

By Meredith May
CHRONICLE STAFF WRITER

Nearly 50 demonstrators were arrested yesterday while blocking doorways of the Oakland Police Department to protest Proposition 21, which would impose sweeping changes on youths charged with violent crimes.

The group chose the police station for the peaceful sit-in because, members said, the neighboring Oakland City Jail is where many young people accused of breaking the law would be held if the measure facing voters on the March 7 ballot passes.

Among other things, Proposition 21 would require that juveniles 14 and older accused of murder or rape be tried as adults if convicted, they would be sentenced to adult prison instead of a California Youth Authority detention center.

Currently, the decision of whether to try a young person in juvenile or adult court rests with the judge.

Helmeted Oakland police

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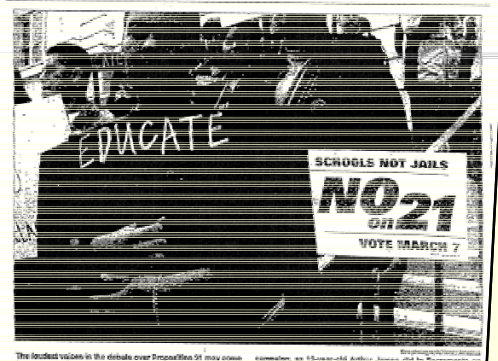

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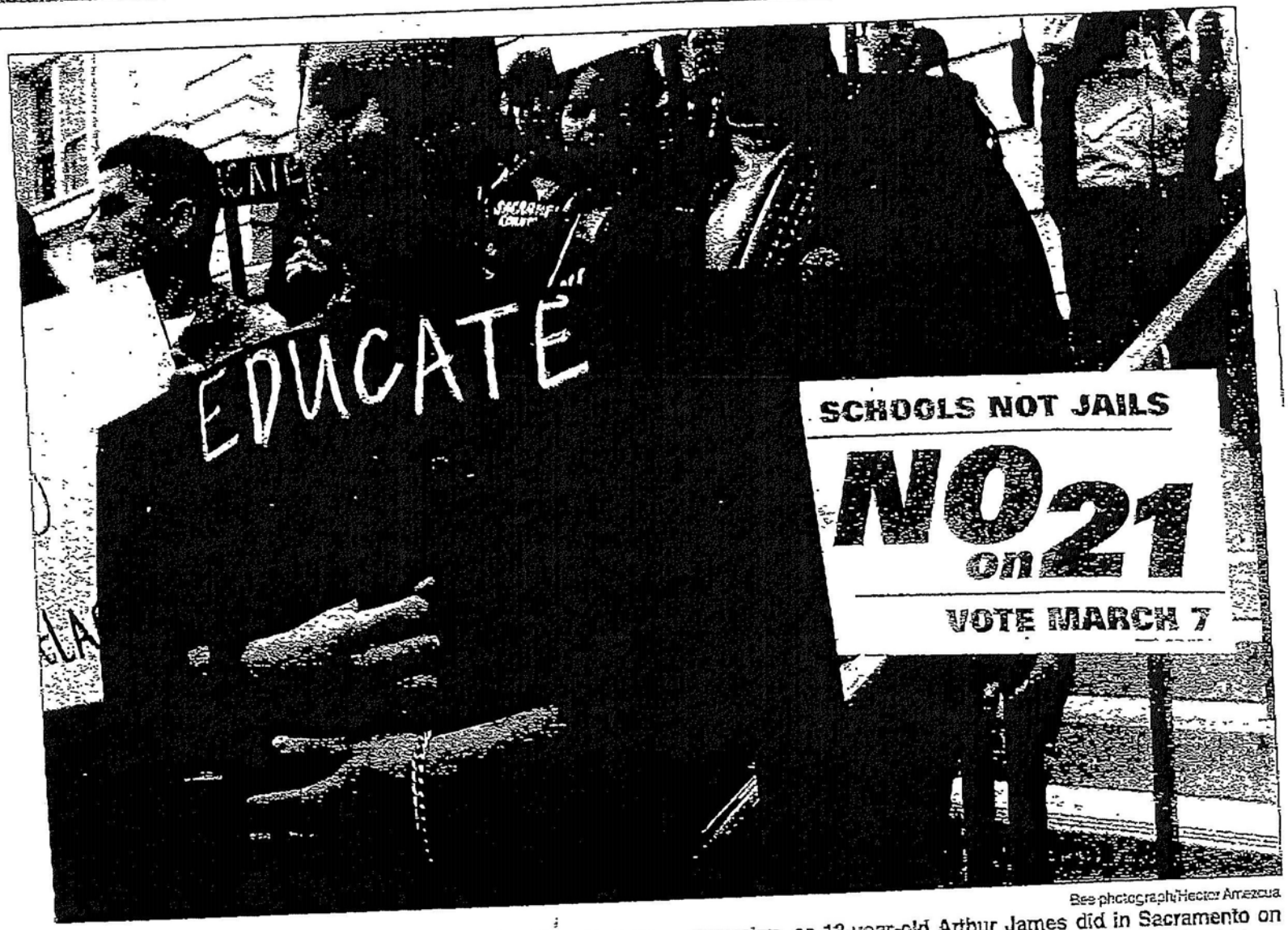

Bee photograph/Hector Amezcua

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50 Arrested in Oakland Protest Against Prop. 21

▶ SIT-IN
From Page A13

where they were cited for unlawful assembly and blocking a doorway. They were all released.

The group, including teachers, lawyers and youth advocates, cast Proposition 21 as a misguided crackdown in a state that is first in the nation for prison spending and 41st for education spending. They called the measure "hateful," saying it lacks funding for social programs to address the needs of school-age children.

"Young people are taking this measure personally, because they are watching their brothers go to prison, while their schools are crumbling," said Robin Templeton, whose coalition of Bay Area youth groups, Critical Resistance Youth Force, staged yesterday's protest to begin a "Week of Rage" against Proposition 21.

Lung-chi Lee, a student at Boalt Hall School of Law at the University of California at Berkeley and one of those arrested, said youths have to protest this way because most are too young to vote and lack the financial might of the proposition's backers.

A crowd gathered to wait for the protesters to be released from Oakland City Jail, and nearly 400 people occupied the intersection facing the police station and blocked traffic briefly before leaving.

Supporters of the proposition, including Gov. Gray Davis, back the measure because although the overall rate of juvenile crime has dropped since 1981, violent juvenile crime has increased by 60 percent during the same period. The measure is also backed by crime victim groups and many district attorneys around the state.

They argue that trying violent juvenile offenders in adult courts and sending them to adult prisons frees more money to be spent on rehabilitating less-violent youths.

Breaking with their counterparts elsewhere in California, San Francisco District Attorney Terence Hallinan and Sheriff Michael Hennessey oppose Proposition 21.

So does San Francisco Board of Supervisors President Tom Ammiano, who addressed the youth protest yesterday.

"Prop. 21 does nothing to address the potential of young people to turn their lives around," he said. "It's worthless, mean-spirited, and expensive."

On Saturday, the executive board of the California Judges Association voted to oppose Proposition 21. It marked the first time in the group's 71-year-old history that it has taken a position on a voter initiative directly affecting the juvenile court system.

If voters pass Proposition 21, the state would spend at least $1 billion building more jails and prisons, according to the state's independent legislative analyst. That office estimates the annual cost of acting on the measure would be more than $330 million. The Oakland-based National Council on Crime and Delinquency says annual costs will be nearly double that.

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Vince Maggiora / The Chronicle

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crisis, God bless Bowen for at least trying to mitigate total disaster.

If her bill passes — and that first requires the Federal Communications Commission to lift its antiquated prohibition against technology overlays — the new area codes would be assigned to the new wireless phone customers.

privilege of conducting business in a public restaurant or chatting up their sweeties on a BART train.

Poor things.

Hey, Sen. Bowen, you go, girl. For the first time in decades, California has a solution to its area code problem that's easy as 1-2-3.

him. His dad's mariachi played at my

Roberto Lovato, formerly a Mission District "homeboy," coordinates the Central American Studies Program at Cal State-Northridge. He wrote this commentary for Pacific News Service.

Santana used to play at. The few lowriders left in the 'hood have nowhere to hang out, get high and listen to Samba Pa Ti.

The digital economy born south of San Francisco also gave birth to the landlords who boot out artists. Who can afford to live there now?

SF Examiner 2/29/00 A-19-Col. 2

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The juvenile crime rate that was so alarming a few years ago has begun to fall. Juvenile felony arrests in California peaked in 1994 and have dropped back below 1989 levels, even as the population of kids between ages 10 and 18 has continued to grow, and the number of kids confined in the California Youth Authority has fallen.

This is not to say juvenile crime is not a serious problem; it is. But if locking kids up is the best way to address it, how do we explain a drop in crime when there are more teens in California and fewer in custody?

First, look at the economy. With so many service jobs available, more kids find honest ways to keep busy and make money. They see a brighter future than kids did a decade ago.

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B4 Monday, February 14, 2000 Sacramento Bee

OPINION

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CRIMINAL LAW

p2, col. 2, 1/31/2000 SF Daily Journal

Juvenile Judges Come Out Against Proposition 21

■ They say they know better than prosecutors when young offenders belong in the adult court system.

By Bob Egelko
Associated Press

In an unusual action, juvenile court judges in California voted to oppose Proposition 21, an initiative allowing prosecutors rather than judges to decide whether many youths are tried as adults.

In a recent poll of the state's 227 juvenile court judges, 71 voted to oppose the measure, three voted to support it and 11 recommended a neutral position. The rest did not respond.

The results were reported Friday by the California Judges Association, whose executive board will decide whether to take a formal position on the March 7 ballot measure at a meeting Feb. 19. The association represents nearly all of the state's 1,500 judges.

Proposition 21 would allow prosecutors to file charges in adult court against defendants as young as 14 who are accused of serious crimes.

Currently those cases can be filed in adult court only if a juvenile court judge decides the defendant doesn't belong in the juvenile system, based on factors such as the seriousness of the charge and the defendant's record.

Minors can be sentenced in juvenile court to confinement only until age 25, but are subject to regular criminal sentences in adult court, up to life in prison.

Proposition 21 would also reduce confidentiality in juvenile courts, expand the three-strikes law, increase punishment for gang-related crimes — including the death penalty for a gang-related murder committed by an adult — and require youths convicted of gang-related crimes to register with police.

Judges ordinarily take no position on ballot measures. But juvenile court judges have more leeway because of court rules requiring them to take active roles in their communities to reduce and prevent delinquency, said Rob Waring, a legal adviser to the Judges Association.

Juvenile court judges believe "they are in a better position than anyone else to decide which kids can be saved and rehabilitated and which kids are beyond that point," and that prosecutors do not have the same "neutrality and objectivity," Waring said.

He said the judges are also concerned that the sweeping measure would be too hard to change if problems arose after passage. A two-thirds legislative vote would be required for amendments.

Mitch Zak, spokesman for the Yes-on-22 campaign, said he understood the judges' concerns but disagreed with them.

Allowing prosecutors to bypass juvenile court hearings is "a necessary element to streamlining the court system and to send a clear signal to violent juvenile offenders that youth is no excuse for rape and murder," he said.

If those cases are sent to adult court, Zak said, "we believe [the judges] will have more time to adjudicate cases that belong in juvenile court."

Published Saturday, February 19, 2000, in the San Jose Mercury News

Juvenile crime measure hotly debated

Advocates say it will streamline court process, but critics claim it goes too far

BY SANDRA GONZALES
Mercury News Staff Writer

Amid public pressure to get tough on crime, particularly on young offenders, California voters will see an initiative on the March ballot that could toughen considerably the way minors are treated in the century-old juvenile justice system.

The interest in transferring more juveniles out of a system that emphasizes rehabilitation and into criminal courts where the purpose is punishment comes at a time when the overall juvenile crime rate is declining, and when recently enacted laws already make it easier to try young violent offenders as adults.

Opponents say Proposition 21 is an attempt to enact through the ballot what the Legislature declined to do. They fear that unfamiliarity with the initiative (three-quarters of respondents in a recent poll of Californians had never heard of it) will lead voters to think they're approving an anti-gang law, based on the ballot language, when actually they would be creating a whole new class of adult criminals out of children.

``It's a shame that voters may only vote on slogans and rhetoric," said David J. Steinhart, director of the Commonweal Juvenile Justice Program in Marin County.

Detractors object especially to one major provision of the prosecutor-driven initiative: the power it would give district

The Sacramento Bee

WEDNESDAY
February 16, 2000

Proposition 21: Pete Wilson and the ghosts of politics past

PETER SCHRAG

Two years ago, as his second term was ending, Gov. Pete Wilson, who may always be best remembered as the man who led the initiative campaigns to end affirmative action and to drive illegal immigrant kids out of California's schools, was working hard to qualify three more measures for the state ballot.

One, Proposition 226, which would have required labor organizations to get annual permission from each member before dues could be withheld and used for political purposes, was defeated in June 1998. A second, Proposition 8, a knotty school reform measure, was trounced in November 1998. The third, Proposition 21, the Gang Violence and Juvenile Violence Prevention Act, will be on the March ballot. If anything in politics resembles Dracula rising from the grave, this could be it.

Proposition 21 has many parts, but its major thrust is to make it easier – and in some cases mandatory – to try some 14-year-olds as adults. It shifts discretion from judges to prosecutors, sets up a gang registration process and further shifts more emphasis from rehabilitation of juvenile offenders to punishment.

Nobody can be sure of Wilson's motives. Surely taking away judicial discretion so that more 14-year-old criminals will be sent to adult prisons can't be regarded as a search for a legacy. Is it then an attempt to have some popular issue in place should Wilson run for president again? Mitch Zach, who was Wilson's political director then and who is helping run the Proposition 21 campaign now, says Wilson was only trying to help the district attorneys and sheriffs who were the real sponsors of the measure.Others, knowing Wilson's penchant for exploiting hot-button ballot measures, aren't so sure.

Was it only an accident that Wilson's people delayed the signature-collection campaign so that what became Proposition 21 didn't get on the ballot until this March, when Wilson might have been on the ballot? Zach says the Wilson staff very much wanted to qualify the measure for November 1998, but simply ran low on funds at a time when the other intiatives had a higher priority.

There certainly can't be many ballot measures on which the most visible sponsor of the signature campaign is almost invisible in the general election – and when $1 million is spent to qualify something but there's only peanuts in the till to get it passed. Zach says this will be a "grass-roots campaign" conducted mostly by the sheriffs and DAs – and that the voters, reading the ballot title and summary, will go for it, just as they did for Proposition 184, the Wilson-backed "three strikes" initiative, back in 1994. Indeed, Zach seems to regard it as a sort of junior three strikes, something that opponents are trying to dismiss as unnecessary and too expensive, but which the majority of voters, recognizing the "the violent gang problem," will support.

Last week's Field Poll doesn't bear him out. It showed only 24 percent of likely voters supporting it, with 41 percent opposed. Zach's own poll, based on the fuller ballot language that most voters will see, indicates that Field's numbers are "fatally flawed," he says.

Even so, there's a musty odor about this measure. While many Americans are spooked by the steady diet of violence and mayhem on the nightly news, youth crime, like other crime, is down sharply. In California, notwithstanding dire expert predictions to the contrary, arrests for juvenile violent crime are down 33 percent since 1995, property crime by 17 percent.

Given the costs, both financial and social, of forcing more juveniles into adult prisons with adult punishment; given the lack of clear benefits in other states of such policies; and given the near certainty that investments in prevention produce better outcomes, the case for Proposition 21 was dubious anyway. But in this case, the changing political climate and the declining crime figures make Proposition 21 look even more like the ghost of politics past.

Wilson, a political moderate, became governor on a strong, positive note focused on prevention and improved children's services. But when the economy turned sour, he turned to wedge issues: the ill-disguised immigrant bashing; the attacks on labor and on the affirmative action policies that he himself had once championed; and, as always, the refrain that he could be tougher on crime than anybody else.

Wilson won re-relection in 1994 on the backs of his wedges. But in re-energizing the labor vote in California and in driving a growing Latino electorate away from his party, he was something of a disaster for the GOP. Two of his last three initiatives failed; even if this one passes, it's hardly something to carve in the history books. In better times – or maybe if he'd trusted his better self – he would have had a better legacy.

But Proposition 21, as the ghost of politics past, also should teach something else. Maybe voters won't finally put a stake through this Dracula's heart. Had it made it to the ballot a few years ago, it would almost certainly have passed, thus leaving the state's criminal justice system even more constrained in its ability to make good judgments based on the facts of individual cases. Maybe if the system required more time for reflection and sober thought on ballot measures, we wouldn't find ourselves so entangled in the bitter moods of the past.

Peter Schrag's column appears in The Bee on Wednesdays. He can be reached by fax at 321-1996; by letter at Box 15779, Sacramento, CA, 95852-0779; or by e-mail at pschrag@sacbee.com.

California needs juvenile justice reform

By Pete Wilson

February 23, 2000

Opponents of Proposition 21 are posing a false choice to voters as the basis for opposing reform of California's outdated juvenile justice system. We are told we must choose between prevention and discipline strategies to combat gang violence and juvenile crime.

If we are serious about protecting our neighborhoods and the schools our children attend, we must do both. Prevention programs that help kids make the right choices and avoid the wrong ones must be fully supported. But when our best prevention and intervention efforts fail, we must protect our families from individuals whose youth cannot be allowed to excuse violence.

Many public, private and nonprofit agencies are engaged in significant proactive efforts, and they deserve our support. As governor, helping recruit a quarter-million caring adults to serve as role models and mentors for at-risk kids was especially gratifying; in fact, Gen. Colin Powell has nationally recognized our California Mentor Initiative. Meanwhile, Gov. Gray Davis -- my Democratic successor -- has graciously acknowledged the many steps we took to reform California public schools so every child, regardless of ethnicity and economic circumstance, is not cheated out of the education they rightly deserve.

Davis strongly supports prevention and education, but he also knows Proposition 21 is necessary to protect society from those individuals for whom prevention and intervention fail.

The governor knows Proposition 21 will not take a penny from constitutionally protected spending for schools or public transportation. It won't take a penny from rehabilitation programs, or affect school bonding or construction, reduce spending for health care or anything else.

Proposition 21 will not impose huge costs upon local government. That is why it is endorsed by the California League of Cities, the California State Sheriffs Association, the California Peace Officers Association, the California Police Chiefs Association and the California Narcotic Officers Association. These respected statewide associations as well as San Diego Sheriff Bill Kolender -- who is also the former director of the California Youth Authority -- understand both the human and financial costs of failing to prevent gang crime and youth violence.

10/18/99

San Francisco Chronicle
THE VOICE OF THE WEST

EDITORIALS

Troubling Trend Toward Trying Youths as Adults

IN AN effort to head off March voter approval of an excessive juvenile crime initiative sponsored by former Gov. Pete Wilson, California now has on the books a Democratic version of get-tough-on-young-criminals legislation.

Led by Senate President Pro Tem John Burton of San Francisco, Democrats pushed through a bill, signed last week by Gov. Davis, that allows more juvenile offenders to be tried as adults. The measure is considerably milder than the Wilson initiative, but it still moves in a troubling direction that assumes that society and the offenders will be better off if more teens are tried as adults.

A new law is a pre-emptive strike against Pete Wilson's juvenile crime measure on the March ballot.

More often than not, trying and convicting a youngster in adult courts serves no one. Treating young criminals is tantamount to writing them off. Adult prisons do not tend to differentiate between young offenders and lifetime violent predators. Any instruction a young person gets in prison is more likely to turn him into a hardened criminal rather than a candidate for productive citizenship.

In states that have substantially expanded juvenile transfers to adult court, the recidivism rate for youthful offenders has risen. Young inmates also are more likely to be sexually assaulted, beaten and attacked with a knife than they would have been in a juvenile detention center.

The new law requires that minors 16 and older who have been convicted of a previous felony be prosecuted in adult criminal court. The law, written by Sen. Dede Alpert, D-San Diego, is certainly far more humane than Wilson's initiative that would give prosecutors authority to try juveniles 14 and older as adults in murder cases and other violent crimes without first getting permission from a judge. It also would permit the death penalty for offenders over 18 in gang-related cases.

But Alpert's bill also takes discretion away from judges in determining who may be tried as an adult and who would benefit from the more forgiving and hopeful juvenile justice system.

The strategy of Burton, Alpert and other Democrats is understandable. The initiative process can thrive on fear-mongering, and it would be advantageous to have an alternative to Wilson's overreaching measure.

But it is a shame that the need to pander to the law-and-order crowd is resulting in the dismantling of a juvenile justice court system that for the most part works.

San Francisco Daily Journal
2/2/2000, p. 1, col 4

CRIMINAL JUSTICE

Law Enforcement Is Divided On Merits of Proposition 21

■ The tough juvenile measure, sponsored by Pete Wilson, is seen by some DAs and cops as unnecessary and too harsh.

By Peter Blumberg
Daily Journal Staff Writer

SACRAMENTO — The many factions of California's criminal justice establishment met Tuesday in a lively Capitol debate over Proposition 21, the juvenile and gang violence initiative slated for the March 7 ballot.

Not surprisingly, key proponents of the sweeping anti-crime measure spearheaded by former Gov. Pete Wilson included a working juvenile prosecutor, the leaders of the California District Attorneys Association and the head of the state's most prominent crime victims group.

So what about the Los Angeles police commander, the San Francisco prosecutor, the Santa Cruz probation officer and the San Diego juvenile court judge who spoke out at Tuesday's hearing before a joint legislative committee?

They're with the opposition.

"We made a point of trying to tell the world that law enforcement support for Proposition 21 is not monolithic," said San Francisco attorney David Steinhart, who is leading the opposition campaign. "There are some rifts."

Los Angeles Police Chief Bernard Parks, for instance, has broken ranks with the California Police Chiefs' Association to publicly oppose the ballot measure.

Parks' legislative advocate, Cmdr. Dan Koenig, cited specific problems with Proposition 21's provision allowing prosecutors to file charges against juveniles directly in adult court and another provision requiring convicted

See JUVENILE, Page 8

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Examiner
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"crisis," God bless Bowen for at least trying to mitigate total disaster.

If her bill passes — and that first requires the Federal Communications Commission to lift its antiquated prohibition against technology overlays — the new area codes would be assigned to the new wireless phone customers.

privilege of conducting business in a public restaurant or chatting up their sweeties on a BART train.

Poor things.

Hey, Sen. Bowen, you go, girl. For the first time in decades, California has a solution to its area code problem that's easy as 1-2-3.

him. His dad's mariachi played at my

Roberto Lovato, formerly a Mission District "homeboy," coordinates the Central American Studies Program at Cal State-Northridge. He wrote this commentary for Pacific News Service.

Santana used to play at. The few lowriders left in the 'hood have nowhere to hang out, get high and listen to Samba Pa Ti.

The digital economy born south of San Francisco also gave birth to the landlords who boot out artists. Who can afford to live there now?

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SF Examiner 2/29/00 A-19 - Col. 2

SCOTT WINOKUR

Prop. 21's vengeance: Cruel and costly

PROPOSITION 21 is visceral justice — the gut as judge and jury. There is no brain in it and certainly no heart.

The measure — which would require more juvenile offenders to be tried as adults and put more of them in adult correctional facilities — is former Gov. Pete Wilson's sorry legacy.

It is an artifact of a time when Californians feared the masses of black, brown and yellow youths in its cities.

When it was politic to be tough as hell on crime.

When the state still refused to recognize and embrace its own future.

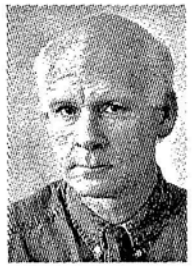
Have you heard the news? Crime has gone down since then.

Tragedy, on the other hand, knows no season.

Earlier this month, a 15-year-old Aboriginal youth in an Australian jail hanged himself in his cell, using his bedsheets. The boy had been serving a 28-day sentence for stealing pencils.

Reminded me of the Texas case 10 years ago where a kid in the slammer overnight on something trivial was beaten to death.

And the Ohio case where a naughty girl whose parents wanted to teach her a lesson was raped in jail during Mommy's and Daddy's disciplinary one-night stand.



SCOTT WINOKUR

Are we better than the Taliban? Isn't there some part of us that wants to chop off hands and stone evildoers?

I think there is — and the proponents of Prop. 21 have to hope it will be that force, that Biblical and Koranic drive for vengeance, that makes us mark the ballot in favor of the measure next Tuesday.

I have next to no compassion for the young punks who get heavily into crime, especially violent crime.

What concerns me about Prop. 21 — even more than its whopping $1.5 billion price tag — is the message it sends to the vast majority of kids who aren't over the line, whose worst offense may be to smoke a joint or flip an illegal U-turn.

Prop. 21 says mess up and your life is pretty much over. It says adults can be as mean and cold-blooded toward you as they are toward each other. I don't think of myself as a softie, but I'm not prepared to say that to the 9 million Californians under age 18.

"The problem with Prop. 21 is that it takes a whole group of kids who aren't misdemeanants but aren't ax murderers either, and it makes it a lot easier to try them as adults," said Sue Burrell, an attorney with San Francisco's Youth Law Center.

"This started out as part of Pete Wilson's bid for the presidency. He stated that this was going to be a big plank of his national presidential campaign, getting tough on juvenile crime.

"This was at the end of 1997, the beginning of 1998. So this is all old stuff. Really, crime started going down pretty much across the board in 1995."

According to Burrell, 70 percent of the kids who commit crimes never are seen again by the juvenile justice system.

Sure, many doubtlessly get too old to be prosecuted as juveniles, so that's why they don't reappear in kiddie courts. But many wise up. It would be criminal to pass a law that effectively deprives these youths of the opportunity for a fresh start.

"The proposition just completely revolutionizes the juvenile justice system in California. It's a take-it-or-leave-it measure," Burrell said.

"When you're looking at any fundamental change in a system like this, you need to take it one step at a time and have a public debate. What this does is ram everything the proponents could think of into 43 pages. It's a terrible way to make social policy."

Scott Winokur is an Examiner reporter. More of his columns are online at www.examiner.com/winokur/

examiner.com

1/31/2000, p. 1, col. 2 San Francisco Daily Journal

CRIMINAL LAW

Gov. Davis Endorses Tough Juvenile Crime Initiative

■ And, breaking ranks, L.A.'s. police chief, arguing it would be counter-productive, says he opposes the measure.

By Peter Blumberg
Daily Journal Staff Writer

SACRAMENTO — With little campaign cash to spend, the battle over the March 7 juvenile justice ballot initiative has become a popularity contest for big-name endorsements.

The opponents of the sweeping anti-crime measure announced early Friday that Los Angeles Police Chief Bernard Parks will soon join their list of backers.

Hours later, the proponents scored a coup of their own: a thumbs-up from Gov. Gray Davis.

A spokesman for the yes on Proposition 21 campaign, Matt Ross, said the combination of support from former Republican Gov. Pete Wilson and the Democratic governor indicates "strong bipartisan" backing for the initiative.

The head of the opposition, San Francisco attorney David Steinhart, said Davis' announcement was not surprising in light of his tough-on-crime campaign stance, but was disappointing.

"He may be the only Democratic politician in the state who is in favor of Proposition 21. He is all alone on this one," Steinhart said. "When he campaigned for the governorship, his view of the perfect model was Singapore justice, where kids are caned for minor offenses. Gray Davis has a lot to learn about preventing juvenile crime."

■ California's juvenile court judges vote to oppose Proposition 21, *See Page 2*

Davis spokesman Michael Bustamante said Friday the Singapore comment was unfair, and he emphasized that the governor's fundamental concern is to make California streets safer.

"He wasn't talking about caning kids; he was talking about a system of justice that has specific, clear punishments for crimes," Bustamante said. "Public safety has been and will continue to be a primary focus for this governor."

Among other provisions, the Gang Violence and Juvenile Crime Prevention Act would make it easier to try teens in adult court for serious offenses, increase penalties for gang-related offenses and vandalism, create tougher rules for juvenile probation and give law enforcement more tools to track young offenders.

Major constituents of the Democratic party, including child advocacy, education and church groups, as well as civil rights and labor organizations, all have lined up against Proposition 21.

The measure's chief supporters are prosecutors, police chiefs and sheriffs and victims' groups. Two notable exceptions are the state's probation officers and Chief Parks, both of whom say the measure is counterproductive.

In disclosure statements filed Friday with the secretary of state, the dueling campaigns revealed just how little their war chests have amassed going into the final six weeks before the statewide vote.

After qualifying the measure for the ballot back in 1998 with several hundred thousand dollars in assistance from major corporations, Proposition 21 proponents now have $6,000 cash in the bank and outstanding debts of $36,000.

Opponents reported a cash balance of $60,000, including $27,000 raised in the first three weeks of January.

Neither side says it can afford to run ads on television, so the campaign will hinge largely on reaching voters through means such as ballot pamphlets, political mail and newspaper editorials.

"We really believe this is a grass-roots campaign," Ross said. "It's going to be led by law enforcement, prosecutors and crime victims who deal with this issue on a daily basis. They will lead the charge to victory on March 7. They are the ones writing the letters to the editor and talking with members of various associations to get us more support."

Steinhart agreed that much of the campaign will be conducted by word of mouth.

"Unless someone is lying in wait that we don't know about and they don't know about you're going to see it played out as a low-budget campaign," he said.

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PREVENTING OR ABETTING CRIME?

Proposition 21 Cracks Down Hard on Young Teens Who, Critics Say, Will Become Criminals If They Are Imprisoned With Adults

By John Roemer
Daily Journal Staff Writer

Opponents scornfully call it "Three Strikes for Tykes." Proposition 21, the "Gang Violence and Juvenile Crime Prevention Act," is drawing vehement opposition as the campaign over the March ballot initiative gears up.

"It targets middle-schoolers," objected Susan L. Burrell, a staff attorney at the Youth Law Center in San Francisco. "And it's completely false to put the word 'prevention' in the title."

But backers think they'll easily have the votes to pass another tough-on-crime measure in California — even one that targets children at a time when crime is declining nationwide.

"All we're trying to do here is to clear the worst of the worst out of the juvenile system," said David LaBahn, deputy executive director of the California District Attorneys Association.

Last week Sacramento County Superior Court Judge James T. Ford ordered both sides to tone down misleading arguments that will appear in the official voters' handbook.

The initiative is a 42-page rewrite of dozens of state laws from the penal and welfare and institutions codes. It cracks down hard on errant 14- to 17-year olds.

Among other provisions it transfers from judges to prosecutors the decision to try juveniles as adults on some charges. The California Judges Association is currently evaluating the proposal and has yet to take a position on it, a spokesman said.

Proposition 21 also mandates tougher penalties for home-invasion robberies, carjackings, witness intimidation and drive-by shootings.

Designed by Gov. Pete Wilson in 1998, the proposal's principal backers now are the California District Attorneys Association and the California Peace Officers Association, along with scores of local police chiefs and sheriffs.

That presents a knotty challenge to Attorney General Bill Lockyer, who has so far taken no position on the measure.

"It would be unusual for there to be an initiative all those groups wholeheartedly endorse that the AG opposes," acknowledged Lockyer spokesman Nathan Barankin. He added:

"But I'd find it very unlikely for Lockyer to express any position on any ballot measure until we figure out which ones might be litigated and we'd be defending in court. Whatever momentary pain we might feel being called pansies for taking no position is nothing compared to what it would be like to go into court to defend a measure and have our endorsement language quoted back to us."

Passage of Proposition 21 would be a tragedy, Burrell said. Adopting a lawyerly approach, she spent weeks analyzing key provisions of the proposed act and relating them to current law.

Burrell also factored in references to legislation signed in October by Gov. Gray Davis intended to make the ballot measure unnecessary by making less dramatic changes in the juvenile justice system.

S. TODD ROGERS/Daily Journal

SUSAN L. BURRELL — "The fact is that this initiative is out of phase and from another time period."

That legislation, SB334, takes effect Jan. 1.

The result of Burrell's labors is a 34-page chart comparing in side-by-side columns the legal status quo with provisions of SB334 and Proposition 21. Another column discusses policy considerations related to the proposed changes.

"I've been a lawyer for 20 years, and this was the hardest piece of analysis I've ever done," she said last week.

"Much of the initiative lists issues by Penal Code section, and it's extremely difficult to keep each piece of the puzzle straight. It gives me a headache just thinking about it."

Among Proposition 21's provisions:

- Juveniles will be tried as adults in all "special circumstances" murders as well as for "one-strike" sexual offenses if the defendant is at least 14 years old.

LEGISLATION

Juvenile Crime Bill Called Harsh Medicine

■ Democrats sign on to a measure aimed at derailing an even harsher ballot initiative.

By Peter Blumberg
Daily Journal Staff Writer

SACRAMENTO—In a last-ditch bid to head off a sweeping juvenile justice ballot initiative placed by former Republican Gov. Pete Wilson on the March 2000 ballot, Democratic lawmakers uncharacteristically have approved a bill that some are calling the toughest juvenile crime package ever to come out of the Legislature.

With little fanfare as they hustled to adjourn for the year on Friday, lawmakers passed an omnibus measure that is much heavier on punishment than on rehabilitation. It would significantly increase the number of teens tried as adults, broaden victim rights and restitution requirements and peel back some of the confidentiality of juvenile proceedings and records.

The measure, SB334, does not go as far as the prosecutor-backed ballot initiative, which Wilson helped to qualify for the ballot after Republican legislators became frustrated watching their juvenile crime bills get bottled up in Democrat-controlled committees. But it goes far enough that even conservative Republicans enthusiastically supported it.

"This will take us a significant step forward in the punishment realm," said Assemblyman Rod Pacheco, R-Riverside, a former deputy district attorney who signed on as the bill's co-author.

But most of the bill would be overridden if the initiative passes, which Capitol insiders say is likely given the general popularity of tough-on-crime measures such as the 1994 "three strikes, you're out" sentencing initiative. Some analysts are saying the new initiative, which also targets gang activity, will affect criminal justice in California nearly as broadly and dramatically as the "three strikes" law.

Although SB334 lead author Dede Alpert, D-San Diego, and other Democrats said they hope that enacting the bill will persuade the public there's no need for Wilson's "Gang Violence and Juvenile Prevention Act," child advocacy groups and the criminal defense bar are pressing Democratic Gov. Gray Davis to veto the bill as they gear up to campaign against the initiative.

'This will take us a significant step forward in the punishment realm.'

Assemblyman Rod Pacheco, R-Riverside

"For the first time in California history, the decision on whether to transfer a juvenile into adult court for prosecution would be based on legislative fiat in lieu of judges making case-by-case determinations," said Los Angeles attorney Lisa Greer, a spokeswoman for the California Public Defenders Association. "It's a major policy shift away from judicial discretion, away from looking at kids as individuals and away from the human aspects of a case toward looking at them as statistics, as a crime category."

The last-minute passage of Alpert's bill Friday, just hours after it was heard in its only Senate committee public hearing in final form, was fraught with irony.

On the one hand, Alpert was forced to express disappointment to her colleagues that the bill had been stripped, at Davis' request, of almost all its $150 million in funding for prevention and intervention programs — the very purpose of the bill in the first place.

On other hand, the California District Attorneys Association, which helped Wilson draft the initiative, said it would remain neutral on SB334 in part because it's not tough enough, but also because the bill is missing a vital provision for helping to separate wayward youths from hard-core repeat offenders. CDAA Deputy Director David LaBahn pointed to a mechanism in the initiative called "deferred entry," which was amended out of Alpert's bill, that allows youths who do not commit violent crimes to avoid the juvenile justice system altogether if they admit wrongdoing for minor offenses and stay out of trouble.

"That's one change that could impact the flow of cases into juvenile court," he said.

But the most controversial element of the Alpert bill and the Wilson initiative is the expansion of prosecutors' discretion to transfer juveniles to adult court.

Under current law, any minor age 16 or older may be transferred to adult court for any crime if a juvenile judge finds the minor unfit for juvenile court. Juveniles as young as 14 can be transferred to adult court if they are

See JUVENILE, Page 10

Growing Pains in Juvenile Justice

Measure raises stakes for teen offenders, reduces judges' power

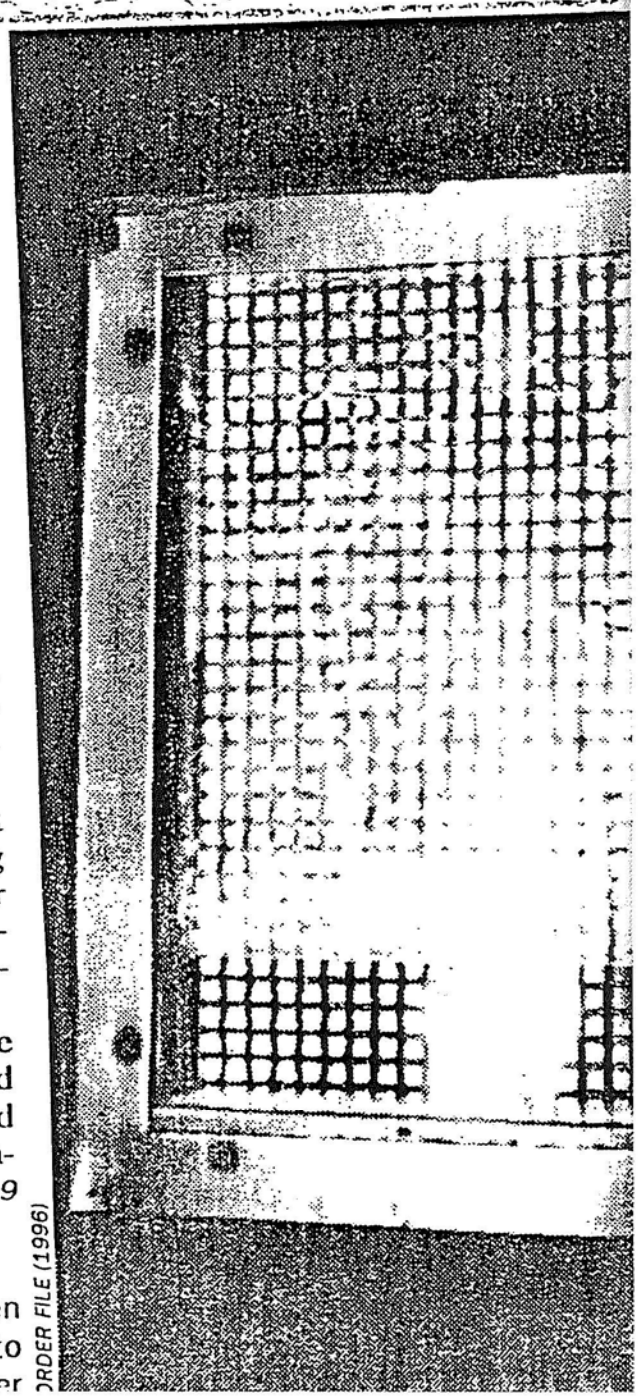
By DENNIS J. OPATRNY

Backers of a get-tough juvenile justice measure that would give prosecutors new authority failed to muster legislative support last year. But they'll be back in 2000, taking their controversial reforms directly to voters.

The March primary election ballot will contain a measure that would dramatically change the way California deals with young criminals, ranging from the neighborhood bike thief to the inner city gangbanger. Provisions would transfer from judges to prosecutors the authority to make key decisions in juvenile cases, including whether young offenders should be tried as adults.

The initiative is probably the most significant tough-on-crime proposal since Three Strikes. Prosecutors say the law is needed to address the serious crimes committed by gang members and other teens, and that it will make it easier for the courts to sepa-

See JUVENILE page 9



ORDER FILE (1996)

LOCKED IN? An initiative on the March 2000 ballot will toughen juvenile laws and grant prosecutors more power over when to

San Francisco Chronicle
THE VOICE OF THE WEST

EDITORIALS

Troubling Trend Toward Trying Youths as Adults

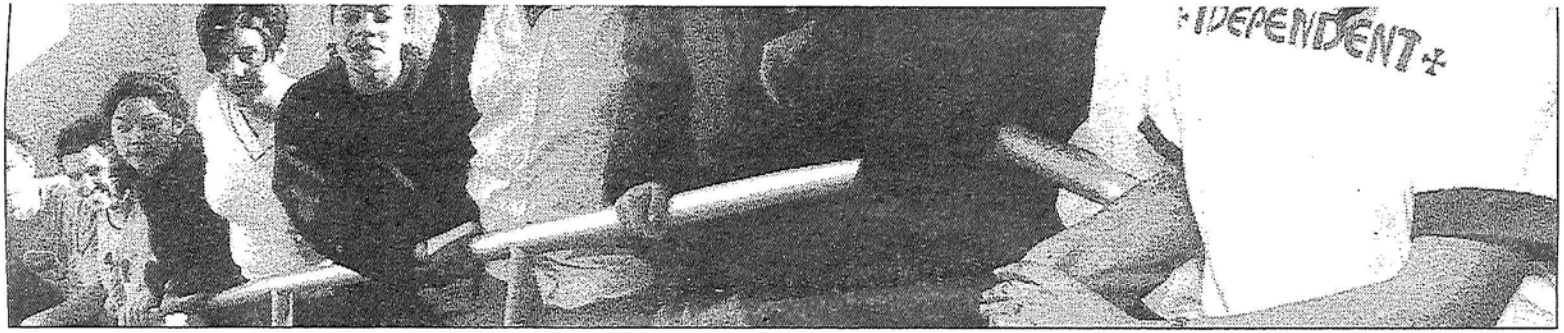
IN AN effort to head off March voter approval of an excessive juvenile crime initiative sponsored by former Gov. Pete Wilson, California now has on the books a Democratic version of get-tough-on-young-criminals legislation.

Led by Senate President Pro Tem John Burton of San Francisco, Democrats pushed through a bill, signed last week by Gov. Davis, that allows more juvenile offenders to be tried as adults. The measure is considerably milder than the Wilson initiative, but it still moves in a troubling direction that assumes that society and the offenders will be better off if more teens are sexually assaulted, beaten and attacked with a knife than they would have been in a juvenile detention center.

A new law is a pre-emptive strike against Pete Wilson's juvenile crime measure on the March ballot.

The new law requires that minors 16 and older who have been convicted of a previous felony be prosecuted in adult criminal court. The law, written by Sen. Dede Alpert, D-San Diego, is certainly far more humane than Wilson's initiative that would give prosecutors authority to try juveniles 14 and older as adults in murder cases and other violent crimes without first getting permission from a judge. It also would permit the death penalty for offenders over 18 in gang-related cases.

But Alpert's bill also takes discretion away from judges



Kids in the hall: Among the Bay Area youths fighting Prop. 21 are the members of Third Eye Movement — (from right) director Jasmin Smith, Maria Cordero, Jesse Ossorio, Ursula Abrahamian, Emmy Bagshaw, Pecolia Manigo, Jasmine Meilleur, Margot Goldstein, Jinee Kim, Julie Browne, and Ying-Sun Ho.

Fighting the fearmongers

Pete Wilson is trying to incarcerate a generation of California kids. In the process, he's turning them into organizers. *By A. Clay Thompson*

If Proposition 21 wins at the polls this March, the initiative's backers can thank the media. Not for coverage of the juvenile justice measure — the press has scarcely glanced at the proposed law — but for priming the public to salivate at each new slab of lock-'em-up legislation.

If the ballot measure is defeated, though, it will be in large part thanks to an underfunded army of kids of color who are taking on former governor Pete Wilson's latest initiative, which they call the war on youth.

Prop. 21 is Wilson's bid to overhaul the way the state treats teenage lawbreakers. It's a book-length document stuffed with hypertechnical legal revisions largely incomprehensible to layfolks. A few months back San Francisco's Youth Law Center cranked out a simple, pared-down analysis of Prop. 21; it's 34 pages long.

The proposed law covers everything from wire-tapping suspects to punishing graffiti writers, expanding the death penalty, and broadening the state's "Three Strikes, You're Out" law. Maybe most importantly, it would hand prosecutors sweeping powers to try teens in adult courts — making them eligible for sentences of life in prison.

Columbine and say the new approach is necessary to rein in killer kids. Defense lawyers and youth advocates argue that, by dismembering the juvenile justice system, the nation is giving up on rehabilitation and turning teenagers into a new outlaw class.

Wilson and the rest of Prop. 21's proponents say current California laws are outmoded and toothless. "Prop. 21 ends the 'slap on the wrist' of current law by imposing real consequences for GANG MEMBERS, RAPISTS, AND MURDERERS," reads the argument in the state ballot handbook. Initiative backers are hyping the idea that California is in the midst of a teen crime wave because state law automatically sets high school–aged murderers free when they turn 25.

It's snappy rhetoric — but it's also patently false. Juvenile crime has been plummeting for seven years straight. And the current laws are anything but weak. Today's teenage mayhem-wreakers aren't being coddled by softheaded liberals; they're often getting hit with lengthy, even permanent, state prison terms.

"We're prosecuting roughly 2,500 kids a year statewide in the adult court," Lisa Greer of the California Public Defenders Association told us. If Prop. 21 passes, ac-

kids currently tried as adults at 1,500 and would like to see that number rise. He calls the counties' 26,000-kids projection unrealistic.

"Sure it looks like the crime rate is falling, and that's good news," LaBahn says. He credits the economic upturn and previous punitive measures with causing the crime drop. "But the question is, is that good enough? Is this going to be the accepted level of violence? Or can we knock it down some more?"

"There are kids serving life without parole in state prisons who are as young as fourteen years old," Greer says. "I see these kids going away on a weekly basis — some of them forever."

Hard of hearing

If Prop. 21 passes, it will be the second time in six years that California's juvenile crime laws have been seriously rewritten. In 1994, at the behest of the legislature, Wilson OK'd new language for section 707 of the California Welfare and Institutions Code — one of the statutes governing minor offenders. Section 707 determines whether a kid as young as 14 should be dealt with by the juvenile system or the adult courts.

When a youth is charged with a crime

ented network of youth boot camps and lockups or if he or she should be sent to the adult system, where rehabilitation is not in the equation.

In Alameda County and San Francisco, minors sentenced to prison time in adult court are typically held in county juvenile halls until they turn 18, when they're shipped out to the big house. Other counties send them directly to the California Department of Corrections.

In California, underage criminals can't be put to death (although youth executions are big crowd pleasers in Texas, Oklahoma, and Virginia). But if they're sent to adult court, they can be hit with lifelong prison sentences. Figures from the state Department of Justice for 1998 show that more than 95 percent of kids convicted in adult court are sent to state pens or county jails. With a few exceptions, however, kids tried in juvenile court must be released when they turn 25.

The 1994 revisions tilted the balance toward prosecutors, who now prevail in the vast majority of fitness hearings — an estimated 80 to 95 percent. Prop. 21 would eliminate those fitness hearings altogether. Instead of making their case before a juvenile court judge, D.A.s pushing serious cases against minors would

ers, probation officers, and the association of counties. "In those twenty percent of cases where the judge keeps the kid in the juvenile court, we're talking about kids who are mentally retarded, schizophrenic — or the victim was an abusive relative, for example," says public defender Greer, who represents minors in Los Angeles County. "These are very special cases. And for each of these kids, staying in the juvenile system means the world."

(Prosecutors initiate the transfer process, and LaBahn says they do so judiciously. "I'm not hearing that we're being inappropriate in trying to transfer these cases," he says.)

That's just for starters. Prop. 21 contains a host of other repressive measures. If it passes, juvenile court cases will be opened to the media. Minors who commit felonies — and just about anything is a felony these days — wouldn't be able to seal their criminal records and wouldn't have a shot at getting into informal probation (rehab, counseling, check in once a week). Under current law, graffiti damage totaling $50,000 or more is punishable by up to a year in prison and a $50,000 fine. If Wilson's initiative passes, you might get a year in the pen for $400 worth of graffiti.

Gang members would be singled out for a startling new array of punishments. As it stands, judges can tack from 1 to 15 years onto a prison term for gang affiliation. The initiative roughly doubles those already beefy sentence enhancements. According to the Youth Law Center, one section mandates "a six-month minimum actual jail term for gang members drinking together in public." And "gang-related homicide" would be added to the list of capital offenses — even though the 21 "special circumstances" now on the books could basically send any convicted killer to death row.

High schools to high-rises

It's 5 p.m. in the Financial District, and some 50 high-spirited teenagers are here to talk finance. Specifically, they want to talk about Pacific Gas and Electric's underwriting of Prop. 21, to the tune of $50,000.

The utility isn't the only corporation

PROPOSITION 21 (Juvenile Crime Initiative Statute), March 2000 Ballot

ANALYSIS OF KEY PROVISIONS OF THE "GANG VIOLENCE AND JUVENILE CRIME PREVENTION ACT OF 1998"

(THE "WILSON INITIATIVE")

Prepared by Sue Burrell, Staff Attorney, Youth Law Center, San Francisco, CA (415) 543-3379

In September 1999, the Legislature passed SB 334, which affects many areas of current law and covers a number of areas potentially affected by the Wilson Initiative. SB 334 includes provisions for direct filing in adult court for minors with prior felonies who are accused of specific violent crimes, mandatory detention and psychological evaluation for minors alleged to have committed gun-related felonies, expanded victims rights, restitution, accountability, and programs for school safety and violence prevention. However, this chart analyzes <u>only</u> those provisions in SB 334 that address topics which are also the subject of proposed changes under the Wilson Initiative. The Governor signed SB 334, but eliminated the funding for school safety and violence prevention, and other funds earmarked for specific prevention programs. SB 334 took effect January 1, 2000.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Additional Criminalization of Gang Activity (Section 3)	Under section 182(a) of the Penal Code, which covers conspiracy crimes, a person who conspires to commit a felony may be punished in the same manner and to the same extent as is provided for punishment of that felony.	Section 3 of the initiative would add section 182.5 to the Penal Code, which would make active participation in a street gang that an individual knows is engaged in a pattern of criminal gang activity a form of conspiracy to commit any felony that the gang commits if that individual either willfully promotes, furthers, assists or benefits from such felonious conduct.	No related provision.	The proposed change is unnecessary, since gang members meeting the requirements for conspiracy currently may be convicted and punished to the extent allowable for the underlying felony. Section 3 also appears to allow active gang participants to be held responsible for <u>*any*</u> felony committed by another gang member, regardless of when it occurred or any personal agreement to be involved in the particular crime. This and other ambiguities in drafting are sure to result in lengthy, costly, successful legal challenges.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Sentencing Enhancements for Gang-Related Crimes (Section 4)	Section 186.22 of the Penal Code, which deals with participation in a criminal street gang, provides: • (a) An individual who actively participates in a street gang with knowledge that its members have engaged in a pattern of criminal activity and who willfully promotes, furthers or assists the gang in felonious conduct shall be punished by imprisonment in county jail for up to one year, or state prison for 16 months, two or three years. • (b)(1) One, two or three years are added to the prison term of an individual convicted of a felony if the felony is committed for the benefit of, at the direction of, or in association with a street gang's criminal activity, with specific intent to promote further or assist criminal conduct by gang members. • (b)(2) Two, three, or four years of prison term are added to the punishment for such a gang-related felony if the felony is committed on or near school grounds during school hours or when minors are using the facility. • (b)(4) A minimum prison sentence of 15 years must be served before parole eligibility for a felony carrying a life sentence if such felony is committed in the course of criminal street gang participation.	Section 4 of the initiative would amend section 186.22 of the Penal Code in the following ways: • (a) No change. • (b)(1) Would increase the additional prison time added to a gang-related felony to 2, 3, or 4 years; an automatic 5 years if the felony itself is classified as "serious" as defined in Penal Code section 1192.7, and an automatic 10 years if the felony is classified as "violent" as defined in Penal Code section 667.5. • (b)(2) Would make the commission of a gang-related felony on or near school grounds an aggravating factor for the court to consider in imposing a term under (b)(1). • Would add a new (b)(4) [the old one would become (b)(5)] that would impose an indeterminate life sentence as the punishment for certain felonies that do not normally carry a life sentence, if such felony is gang-related. The minimum term of this indeterminate life sentence would be calculated as the greater of: (A) the term determined by the court for the underlying conviction, including any enhancements or periods prescribed for offenses enumerated in paragraphs (B) and (C) of this subsection; (B) 15 years, if the felony is a home invasion robbery, carjacking, felonious shooting at an inhabited building or vehicle, or commission of another felony with a deadly weapon; (C) 7 years if the felony is extortion or threatening of a witness or victim. • (b)(5) Would require that a minimum of 15 years be served except as provided in (b)(4). .... • (d) Would make any gang-related public offense, either felony or misdemeanor, punishable at a minimum by imprisonment of up to one year in county jail, or one , two or three years in prison. If sentenced to jail,	No related provision.	These increased sentences for gang-related crimes are proposed at a time when serious crime has been in significant decline for a number of years. Gang crime, too, has declined – for example, Los Angeles County gang homicides have dramatically declined over a period of years to a point as low as they were more than a decade ago. Each year tacked onto a prison sentence translates into $36,000 in taxpayer expense for incarceration at the Youth Authority, or $21,470 in the Department of Corrections. Crowding and its damaging effects on conditions already pose serious problems in county and state facilities. Ironically, incarceration may actually solidify and increase gang ties, as youth in overcrowded facilities band together for protection and "survival." California is already being forced to reevaluate the serious fiscal impact of the get tough "3-Strikes"legislation, as well as growing evidence that counties most often using "3-Strikes" actually have higher crime rates than those which do not. Our Penal Code already provides for quite lengthy, punitive sentences without further upping the ante. The proposed changes would redirect vast sums of public money into corrections that would be more wisely spent on education and other essential public services.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
	• (e) For purposes of section 186.22(a), "pattern of criminal gang activity" the commission, attempted commission or solicitation of, conviction or sustained juvenile petition for two or more of a list of 23 possible offenses within a three year period. The list of offenses includes: robbery, assault with a deadly weapon, homicide, arson, grand theft, witness or victim intimidation, looting, drug trafficking, drive-by shooting, and mayhem. [See **section 35** of this analysis regarding "active participation " in a criminal street gang.]	the person shall not be eligible for release until at least 180 days have actually been served. Even where probation is granted or the sentence is suspended, the court must require as a condition thereof that 180 days be served in the county jail. • (e) Would add to the meaning of "pattern of criminal activity," "conspiracy to commit" ...two or more of the listed offenses. Would also add to the list of offenses included in the definition of "pattern of criminal gang activity," (10) grand theft of a firearm, (24) threats to commit crimes resulting in death or great bodily injury, and (25) theft and unlawful taking or driving of a vehicle. • (g) Would permit striking the additional punishment in this section in the interest of justice. • (h) Would requires the state to pay 100% of the per capita institutional cost to the Dept. of the Youth Authority (pursuant to Welf. & Inst. Code section 912.5) for Youth Authority commitments for convictions pursuant to this section. • (i) Would explicitly provide that a prosecutor, to establish the "active participation" element necessary to sustain a conviction or juvenile petition under section 186.22, does <u>not</u> have to show that the defendant "devoted all or a substantial part of his or her time to the gang" or that the defendant was a member of the gang.		California does not need such expensive, and in some cases, absurd responses to gang crime. For example, subdivision (d) would apparently result in a six month <u>minimum</u> actual jail term for gang members drinking together in public (any "public offense punishable as a felony or a misdemeanor" committed for the benefit, at the direction of, or in association with the gang with the intent to promote, further or assist in any criminal conduct by the gang). Subdivision (h) relieves counties of any financial obligation for commitments based on gang-related crimes, and places the full cost on the State. This is potentially a huge cost, which will be borne by state taxpayers, whether or not they live in areas with high levels of gang crime. [In contrast, Welf. & Inst. Code section 912.5 bills counties for portions ranging from 50 % to 100% of the cost of Youth Authority commitments for several categories of offenses.] Some of the proposed enhancement provisions are unfair and/or nonsensical. For example, in proposed subdivision (i), if the prosecutor is not required to prove that the defendant was a member of the gang, why should the person be prosecuted at all under the gang provisions?

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Penalties for Coercion to Participate in Criminal Street Gangs (Sections 5 and 6)	Section 186.26 of the Penal Code provides: • (a) Any adult who uses physical violence to coerce, induce, or solicit a person under the age of 18 to actively participate in a criminal street gang, whose members engage in a pattern of criminal gang activity shall be punished by one, two or three years in state prison. • (b) Any adult who threatens a minor with physical violence on two or more separate occasions in a 30-day period with the intent to coerce, induce or solicit the minor to actively participate in a criminal street gang whose members engage in a pattern of criminal gang activity shall be punished by up to one, two or three years in state prison, or up to one year in county jail. • (c) Establishes that such conduct, when engaged in by a minor over the age of 16, is a misdemeanor. . . . . • (e) Clarifies that speech alone may not form the basis for conviction under this section, except upon a showing that the speech itself threatened violence against a specific person, that the defendant had the apparent ability to carry out the threat, and that physical harm was imminently likely to occur.	Section 5 of the initiative would repeal the current Penal Code section 186.26, and Section 6 would replace it with a new Section 186.26, which would: • (a) Punish with 16 months, two or three years in state prison any person who [without the use of violence] solicits or recruits another to actively participate in a criminal street gang with the intent that such recruited or solicited person will either participate in a pattern of criminal street gang activity or promote. further, or assist in any felonious conduct by members of the criminal street gang. • (b) Punish with two, three, or four years in state prison any person who uses threats of physical violence to coerce, induce or solicit another to actively participate in a criminal street gang at least twice in 30 days. • (c) Punish with three, four, or five years in state prison a person who uses physical violence to coerce, induce or solicit another to actively participate in a criminal street gang or to prevent such adult from leaving the gang. • (d) Add three years imprisonment to the punishment for any offense described above if such offense is committed against a minor. • The initiative would eliminate current (e) protecting speech which does not carry the threat of violence.	No related provisions.	Again, increasing penalties for gang-related offenses will result in enormous additional costs to the taxpayers, without a corresponding increase in public safety. The currently existing protection for pure speech should be retained as an important statement that constitutionally protected speech may not be subjected to legal penalties.
Gang Member Registration Requirements (Section 7)	Under current law, gang members are not required to register with law enforcement agencies.	Section 7 of the initiative would add section 186.30 to the Penal Code, requiring registration by any person convicted in a criminal court or who has had a petition sustained in juvenile court for active participation in a criminal street gang or an enhancement under section 186.22, or where a court has determined at the time of sentencing or disposition that the person committed a gang-related offense. Registration is with the chief of police of the city or sheriff of the county in which he or she resides within 10 days of his or her release from custody or within 10 days of his or her arrival in any city and/or county to reside there, whichever occurs first.	No related provisions.	It is unclear how gang registration will assist law enforcement. Police and Sheriffs' Departments already have extensive gang databases to assist in the apprehension of gang members suspected of committing crimes. The initiative would require the development of a huge additional record system, but no funding is attached. This will drain needed resources from law enforcement with no appreciable benefits.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Gang Member Registration Requirements (Section 8)	Under current law, gang members are not required to register with law enforcement agencies.	Section 8 would add section 186.31 to the Penal Code requiring that, at the time of sentencing or dispositional hearing, a court inform any person subject to the gang registration requirements of his or her duty to register and that the court's advisement be noted in the court minute order, a copy of which would then be sent to the law enforcement agency with jurisdiction for the last known address of the person who is required to register. This section would also require that the parole or probation officer assigned to that person verify that he or she has complied with the registration requirements.	No related provisions.	The initiative would impose big additional workloads on already stretched probation/parole officers and law enforcement agencies, again for no discernible purpose. For example, Los Angeles County already has 120,000-130,000 names in gang databases. If even a small percentage of those individuals is convicted of a gang-related crime, the registration workload would be enormous for the probation and parole departments and law enforcement agencies involved.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Gang Member Registration Requirements (Section 9)	Under current law, gang members are not required to register with law enforcement agencies.	Section 9 would add section 186.32 to the Penal Code, specifying how the gang registration requirements would be satisfied by juveniles and adults: (a)(1) Juveniles (A) The juvenile would have to appear at the law enforcement agency with a parent or guardian. (B The law enforcement agency would serve the juvenile and parent with a California Street Terrorism Enforcement and Prevention Act notification including, where applicable, that the juvenile belongs to a gang whose members are engaged in a pattern of criminal gang activity. (C) The juvenile would submit a signed statement giving any information required by the agency. (D) Fingerprints and a current photo of the juvenile would be submitted. (a)(2) Adults (A) Must appear at the law enforcement agency. (B)-(D) same as for juveniles. (b) Requires any person subject to the gang registration requirements to inform in writing the law enforcement agency with whom he or she last registered of his or her new address. If the new address is located in the jurisdiction of another law enforcement agency, registration with the new agency would be required within 10 days of the change of address. (c) Registration requirements under this section would terminate five years after the last imposition of such a registration requirement.	No related provisions.	This extra punishment over and above the court's sentence is not justifable or needed for law enforcement purposes, since their gang affiliation and criminal record is already available through gang databases. Retention of the registration for five years is excessive. Probation and parole, even for very serious offenders is never for so long a period. Such registration may make it difficult for gang members who have left the gang to fully break away from the gang member label, and it may result in unnecessary harassment of those in the registry any time a gang crime occurs.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Gang Member Registration Requirements (Section 10)	Under current law, gang members are not required to register with law enforcement agencies.	Section 10 would add section 186.33 to the Penal Code which would: • (a) Make it a misdemeanor to knowingly violate one's gang registration requirements, and • (b)(1) Add 16 months, two or three years to the prison sentence of a person who committed a gang-related felony (as defined in proposed section 186.30) if such person had, prior to commission of the underlying felony, knowingly failed to meet his or her gang registration requirements.	No related provision.	Since it is unclear what purpose the gang registration serves, it is even more unclear what purpose will be served by incarcerating people who fail to comply for up to three years in prison. If persons subject to registration commit a new gang-related offense, they will be prosecuted for that crime anyway. This section is unnecessary.
Expansion of the Definition of Capital Murder (Section 11)	• Section 190.2(a) of the Penal Code specifies that first degree murder shall be punishable by death or life imprisonment without parole if one or more of 21special circumstances are found to be true. The special circumstances include: • (1) Carrying out the murder intentionally and for financial gain; • (2) The murderer was previously convicted of first or second degree murder; • (3) The defendant has been convicted of more than one first or second degree murder in this proceeding; • (4) The murder was committed using a hidden destructive device, bomb or explosive, and the defendant knew or reasonably should have known that his or her acts would create a great risk of death to one or more human beings; • (5) The murder was committed to avoid arrest or perfect an escape from custody; • (6) The murder was committed by means of mailing or delivering a destructive device, bomb, or explosive that the defendant knew or should reasonably have known would create great risk of death to one or more human beings; • (7) The victim was a peace officer intentionally killed while engaged in the performance of his duties and the defendant knew or reasonably should have known of that status; or the peace officer was intentionally killed in retaliation for performance of official duties; • (8) Same as (7) for federal law enforcement officers or agents; • (9) The victim was a firefighter intentionally killed in the performance of his duties and the defendant knew or reasonably should have known of his status; • (10) The victim was a witness to a crime and was killed to prevent his or her testimony in any criminal or juvenile proceeding, or in retaliation for his or her testimony;	Section 11 would amend section 190.2(a) to add as the 22nd special circumstance: • (22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.	No related provision.	Is there a gang related murder that <u>wouldn't</u> already fit into one of the existing 21 special circumstances? Unlikely. This proposed addition is unnecessary.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
	• (11) The victim was a prosecutor and the murder was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties; • (12) Same as (11) for judges or former judges; • (13) Same as (11) for current or former elected or appointed officials; • (14) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity; • (15) The defendant killed the victim while lying in wait; • (16) The victim was killed because of his race, color, religion, nationality or country of origin; • (17) The murder was committed while the defendant was engaged in or fleeing from the commission of one or more of a specified list of crimes (including robbery, kidnapping, rape, sodomy, lewd acts on a minor, oral copulation. Burglary, arson, trainwrecking, mayhem, rape by instrument, and carjacking); • (18) The murder was intentional and involved the infliction of torture; • (19) The defendant intentionally killed the victim by administration of poison; • (20) The victim was a juror and the murder was intentionally carried out in retaliation for or to prevent performance of the victim's official duties; • (21) The murder was intentional and committed by discharging a firearm from a motor vehicle with the intent to inflict death.			

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Penalties for Vandalism (Section 12)	Section 594 of the Penal Code defines vandalism as defacing, damaging or destroying property with graffiti or other inscribed material, and prescribes the following penalties: • (b)(1) For damage totaling $50,000 or more, vandalism is punishable by up to one year imprisonment in state prison or county jail or a fine of up to $50,000, or both the fine and imprisonment. • (b)(2) For damage of $5000 or more but less than $50,000, vandalism is punishable by imprisonment in the state prison, or county jail not exceeding one year, a fine of up to $10,000, or by both the fine and imprisonment. • (b)(3) For damage of $400 or more but less than $5000, vandalism is punishable by imprisonment in the county jail of not more than one year, a fine of up to $5000, or by both the fine and imprisonment. • (b)(4)(A) For damage totaling less than $400, vandalism is punishable by imprisonment of up to six months in the county jail, a fine of not more than $1000, or by both the fine and imprisonment. • (b)(4)(B) If the damage totals less than $400 and the defendant has previously been convicted of vandalism, vandalism is punishable by imprisonment in county jail of not more than 1 year, a fine of not more than $5000, or by both the fine and imprisonment. • (c) In addition to incarceration or sentencing the court may order the defendant to personally clean up, repair or replace damaged property or, if the jurisdiction has a graffiti abatement program, order the defendant (and parents if a minor is involved) to keep the damaged property or other specified property free of graffiti for up to a year. . . . . • (g) The court may also order counseling for persons its has ordered to perform community service or graffiti removal.	Section 12 would amend section 594 of the Penal Code by eliminating the two most serious categories (b)(1) and (b)(2), and converting the least serious category into a "wobbler" felony, as follows: • New section 594(b)(1) would provide that for all damage totaling $400 or more, vandalism would be punishable by imprisonment of up to one year in state prison or county jail, by a fine of up to $10,000 if the damage is less than $10,000 or a fine of up to $50,000 if the damage totals more than $10,000, or by both a fine and imprisonment. • (b)2 and (b)(3) would be eliminated. • (b)(4) would increase the maximum term of imprisonment for vandalism totaling less than $400 of damage to one year in a county jail instead of the current law's 6 month maximum. • Section 12 of the initiative would retain section 594(c) in its current form. • Section 12 of the initiative would retain section 594(g) in its current form.	No related provisions.	Reducing the threshold for felony vandalism from $50,000 to $400 is a gigantic leap. It is difficult to imagine a circumstance in which the current maximum of <u>six months</u> incarceration for vandalism resulting in less than $400 damage, and a $1000 fine, or both, would be insufficient punishment. Accountability for vandalism can be much better achieved through direct community service and restoring victim's property than through incarceration. The proposed change would squander taxpayer resources in a manner that is not useful to anyone.
Expansion of Law Enforcement's Wiretapping Powers (Section 13)	Penal Code section 629.52 (a)(1) allows judges to enter ex parte orders for wiretapping upon a showing of probable cause that an individual is committing, has committed or is about to commit any of a series of offenses, including importation, possession for sale, transportation, manufacture, or sale of large quantities of controlled substances; murder, solicitation of murder, bombing or kidnapping; or conspiracy to commit any of the specified crimes.	Would amend section 629.52(a)(1) of the Penal Code by adding active participation in a criminal street gang and all gang-related felonies as defined in Penal Code section 186.22, to the list of crimes for which wiretapping could be authorized upon a probable cause finding by a court.	No related provisions.	Since wiretapping is already allowed upon a showing of probable cause for a wide range of crimes <u>and</u> conspiracy to commit those crimes, it is hard to see why this change is needed. There is a danger that the low threshold of required proof will result in "bootstrapped" wiretap orders through use of the gang participation provision when there is insufficient evidence to show commission of one of the specified crimes.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
References to Sentence Enhancement Statutory Provisions (Section 14)	Under Section 667 of the Penal Code, all laws referred to in the guidelines for the enhancement of sentences for convicted defendants who had served prior prison sentences are references to statutes as they existed on June 30, 1993.	Section 14 would add section 667.1 to the Penal Code which would specify that when dealing with sentence enhancements for felonies committed on or after the effective date of this initiative, all laws referred to in section 667 would be references to statutes as they exist on the effective date of the initiative.	No related provision.	This provision appears to be an effort to assure that any changes to statutes referred to in section 667 occurring between 1993 and the effective date of the initiative will count for purposes of future sentencing enhancements.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Enhancement of Prison Terms ("Strikes") Because of Prior Prison Terms Served (Section 15)	Section 667.5 of the Penal Code provides the following as to the enhancement of prison terms for felonies: (a) The prison term for a violent felony specified in 667.5(c) is enhanced by three years for each prior prison term served by that defendant for a prior violent felony unless the prior prison term was completed more than ten years before the commission of the present felony and the person remained prison free and had no new felony conviction during that period. • (b) The prison term for any felony is enhanced by one year for each prior prison term served for any felony unless the prior prison term was completed more than five years before the commission of the present felony and the person remained prison free and had no new felony conviction during that period. • (c) Violent felonies for which the sentence can be enhanced by three years include: • (1) Murder, voluntary manslaughter • (2) Mayhem • (3) Rape (P.C. § 261(a)(2) or (6), § 262(a) (1) or (4) • (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury • (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury • (6) Lewd acts on a child under 14 years of age (P.C. § 288) • (7) Any felony punishable by death or life imprisonment • (8) Any felony in which the defendant inflicts great bodily injury or uses a firearm • (9) Any robbery of a house or inhabitable vessel or trailer or other building where the defendant used a deadly or dangerous weapon • (10) Arson (P.C. § 451(a)) • (12) Attempted murder • (13) A violation of section 12308 • (14) Kidnapping (P.C. § 207(b)) • (15) Kidnapping (P.C. § 208(b)) • (16) Continuous sexual abuse of a child (P.C. § 288.5) • (17)Carjacking (P.C. § 215(a)) with use of a deadly weapon • (18)First degree robbery (P.C. § 213(a)(1)(A)	Section 15 would expand the list of offenses that are considered violent crimes for the purposes of sentence enhancement ("strikes") for a felony under section 667.5. It would add to the list the following offenses: • (19) Extortion (P.C. § 518) which would constitute a felony violation of Penal Code section 186.22 • (20) Threats to victims or witnesses (P.C. § 136.1) which would constitute a felony violation of Penal Code section 186.22 • (21) Any first degree burglary (P.C. § 460) where it is proved that another person other than an accomplice was in the residence at the time of the burglary • (22) Any violation of Penal Code section 122022.53 (use of firearm in commission of felonies). In addition: • (9) The initiative would eliminate the qualifying language, and simply define "any robbery" as a violent felony. • (10) The initiative would add Penal Code section 451(b) to this provision (arson causing an inhabited property to burn). • (13) The initiative would add Penal Code sections 12309 and 12310 to this provision (exploding a destructive device causing bodily injury or death). • (14) and (15) would be combined to provide simply that "kidnapping" is a violent felony.	No related provisions.	The offenses in section 667.5 are "strikes" for purposes of the "Three Strikes" law, permitting (upon the third "strike") commitment to prison for 25 years to life. California is already struggling with the staggering costs of "Three Strikes," and mounting evidence that many relatively lightweight offenders have been subjected to its terms. The cost of expanding the list of 667.5 offenses will only increase as the inmate population ages. It has been estimated that the $21,000 per year cost for a young inmate goes up to $60,000 per year for an older inmate with health problems. From a public safety standpoint, as well, lengthening sentences makes little sense. Criminality, for most offenders, peaks in the late teens, and drops off substantially after age 21. The proposed changes would impose lengthy incarceration on many people who, in all likelihood, are already at the end of their criminal "careers." The money spent on incarceration would be better spent on preparing young offenders to work, thereby reducing the chances of recidivism and limiting the devastating effects of incarceration on their families. The addition of "any robbery" exemplifies the dangers of endlessly adding onto the list of violent felonies in section 667.5. In juvenile court, "any robbery" could be a schoolyard lunch theft.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
References to Sentence Enhancement Statutory Provisions (Section 16)	Section 1170.12 of the Penal Code specifies that when it refers to other statutory provisions pertaining to sentence enhancements for convicted defendants previously convicted of felonies, these references are to the statutes as they existed on June 30, 1993.	Section 16 would add Section 1170.125 to the Penal Code, which would specify that for sentence enhancements under section 1170.12 for offenses committed on or after the effective date of this initiative, the statutory references made in section 1170.12 pertain to the statutes as they will exist on the effective date of the initiative.	No related provisions.	This provision appears to be an effort to assure that any changes to statutes referred to in section 1170.12 occurring between 1993 and the effective date of the initiative deal of the initiative will count for purposes of future sentencing enhancements.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Expansion of Crimes Defined as Serious Felonies ("Strikes") and the Prohibition of Plea Bargaining on Cases Involving Serious Felonies (Section 17)	Section 1192.7 of the Penal Code prohibits, except under special circumstances, plea bargaining in a case in which the indictment or information charges any "serious felony," a felony involving personal use of a firearm, or an offense involving driving under the influence. In subsection (c), "Serious felony" is defined to include 34 offenses: (1) murder, voluntary manslaughter, (2) mayhem, (3) rape, (4) forcible sodomy or with threat of great bodily injury, (5) forcible oral copulation or with the threat of great bodily injury, (6) lewd acts with children under 14, (7) any felony punishable by death or life imprisonment without parole, (8) any felony in which the defendant inflicts great bodily injury or uses a firearm, (9) attempted murder, (10) assault with the intention to commit rape or robbery, (11) assault with a deadly weapon on a peace officer, (12) assault by a life prisoner on a noninmate, (13) assault with a deadly weapon by an inmate, (14) arson, (15) exploding a destructive device with the intent to injure, (16) exploding a destructive device causing great bodily injury or mayhem, (17) exploding a destructive device with intent to murder, (18) burglary of a dwelling or trailer, or other building (19) robbery or bank robbery, (20) kidnapping, (21) holding of a hostage by a prison inmate, (22) attempt to commit a felony punishable by death or life imprisonment without parole, (23) any felony in which the defendant personally used a dangerous or deadly weapon, (24) selling or furnishing controlled substances to a minor, (25) violations of section 289 (anal penetration) by force or fear of great bodily injury, (26) grand theft involving a firearm, (27) carjacking, (28) continuous sexual abuse of a child, (29) any violation of section 244 (throwing acid or flammable substances), (30) assault with a deadly weapon on a firefighter, (31) violation of section 264.1 (rape by foreign object), (32) any violation of section 122022.53 (use of a firearm in specified felonies), (33) any attempt to commit one of the above-mentioned offenses, (34) any conspiracy to commit offenses in (24).	Section 17 would amend Section 1192.7 by adding to the list of serious felonies constituting "strikes" and for which plea bargaining is prohibited. It would renumber some of the current provisions and add the following offenses: • (28) Any felony offense that would also constitute a felony under section 186.22 • (29) Assault with the intent to commit mayhem, rape, sodomy or oral copulation (P.C. § 220) • (30) Throwing acid or flammable substances (P.C. § 244) • (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter (P.C. § 245) • (32) Assault with a deadly weapon on a public transit operator, custodial officer or school employee (P.C. §§ 245.2, 245.3, 245.5) • (33) Discharge of a firearm in an inhabited dwelling, vehicle or aircraft (P.C. § 246) • (34) Commission or rape or penetration with a foreign object in concert with another (P.C. § 264.1) • (35) Continuous sexual abuse of a child (P.C. § 288.5) • (36) Shooting from a vehicle (P.C. § 12034) • (37) Intimidation of victims or witnesses (P.C. § 136.1) • Terrorist threats in violation of section 422 • (39) The initiative would move the current provision (33) (on attempts) to this section • (40) Any violation of section 12022.53 (use of a firearm in specified felonies) • (41) Any conspiracy to commit an offense described in this subdivision. (As part of this amendment, the initiative would delete the specific conspiracy provision currently in (34) These additions would be inserted beginning at current (28), with the remainder of current provisions renumbered. In addition, the initiative would add simple "bodily injury" to (16) and amend (18) to provide that "any burglary of the first degree" is a "serious felony" for purposes of this statute.	No related provisions.	As a practical matter, the criminal justice system would collapse without at least some plea or sentence bargaining. This is an important safety valve, since prosecutors are forced to make initial filing decisions with a minimum of facts. Subsequent investigation often shows that the charges filed cannot be proved, or that there are mitigating facts which make a reduction in charges appropriate. Adding to the laundry list of cases in which plea bargaining is prohibited would frustrate the process by which the true "worth" of cases is determined and dealt with in courthouses across the State. If this process were not allowed to occur, many more criminal cases would result in trials, and the system would sink beneath the weight of additional court costs, longer periods of detention, and systemic delays. And, see comments to section 15 on the policy reasons not to expand the offenses constituting "strikes."

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Jurisdiction Over Delinquent Minors (Section 18)	Section 602 of the Welfare and Institutions Code specifies that any person under the age of 18 when he or she violates any state or federal law or city or county ordinance defining a crime, other than an ordinance establishing an aged-based curfew, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court. Persons under the age of 18 may be handled in adult criminal court only after a juvenile court hearing in which the court determines whether the minor is unfit for handling in the juvenile system based on specified statutory criteria. (W&I § 707). [see **section 26**]	Section 18 of the initiative would amend section 602 by adding a subdivision (b) giving automatic adult criminal court jurisdiction for prosecution of minors 14 years or older for specified offenses: (b) Any person who is alleged, when he or she was 14 years or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction: (1) Murder, if one or more special circumstances (P.C. § 190.2) permitting imposition of the death penalty or life imprisonment without the possibility of parole is alleged and if the prosecutor alleges that the minor personally killed the victim; (2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances in the One Strike law (P.C. § 667.61(d) or (e) – prior conviction of specified sex crimes, and circumstances in the present case including kidnapping with additional risk of harm, mayhem or torture, present offense arose during a burglary, great bodily injury, use of deangerous or deadly weapon, multiple victims, forcible administration of controlled substance to victim): (A) Rape (P.C. §261(a)(2)) (B) Spousal rape (P.C. § 262(a)(1)) (C) Forcible sex offenses in concert with another (P.C. § 264.1) (D) Forcible lewd and lascivious acts on a child under 14 (P.C. § 288(b)) (E) Forcible penetration by foreign object (P.C. §289) (F) Sodomy or oral copulation (P.C. S 286 or 288a) by force or fear of bodily injury (G) Lewd and lascivious acts on a child under 14 (P.C. 288(a)) unless the defendant qualifies for probation under section 1203.066 of the Penal Code.	SB 334 (§ 12.2) amends section 602 by adding (b), which provides for automatic prosecution in adult criminal court for minors 16 years or older if they have previously been declared a ward of the court for commission of one or more felonies committed at age 14 or older, and are alleged in the current offense to have committed any of the following: (1) First degree murder (P.C. §§ 187, 189, if it is alleged that the minor personally killed the victim. (2) Attempted, willful, deliberate, and premeditated murder, if it is alleged that the minor personally attempted to kill the victim. (3) The following sex offenses, if it is alleged that the minor personally committed any of these offenses and that one of the circumstances enumerated in Penal Code sections 667.61(d) or (e) • Rape (P.C. § 261(a)(2) • Spousal rape (P.C. § 262(a)(1) • Forcible sex offenses in concert with another (P.C. § 264.1) • Forcible lewd and lasivious acts on a child under 14 (P.C. § 288(b)) • Forcible penetration by foreign object (P.C. 289(a)) • Sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury to the victim. (P.C. § § 286., 288(a)) (4) Aggravated forms of kidnapping, for which the penalty is life in prison, and the minor personally and intentionally exposed the victim to substantial likelihood of death or great bodiy injury. (5) Any felony enumerated in Penal Code section 12022.53(a), in which the minor personally uses a firearm (P.C. § 12022.53(c) or (d)).	In placing the age of automatic filing in adult court at 14, the initiative goes too far. This means that children in 9th grade may be tried in adult court, even though they are considered too immature to drive, smoke, drink or go to an R-rated movie. The initiative (and SB 334) represent a huge change in juvenile court law. In permitting automatic filing in adult court for juveniles alleged to have committed specified crimes, the initiative and SB334 completely eliminate the safeguard of a judicial determination as to whether the minor can be rehabilitated in the juvenile system. While most juveniles subjected to judicial fitness hearings in the past have been sent to adult court, the previous system enabled courts to hold back a small group of juveniles where there were mitigating circumstances to justify such a decision. This change, initiated by SB 334, should not be expanded to include younger children and additional offenses. Research from states in which the age for adult court handling has been reduced indicates that they have not enjoyed a reduction in juvenile crime or recidivism. Moreover, reducing the age for adult court handling would create tremendous additional costs for the Department of Corrections, Youth Authority and county jails and juvenile halls, as these youth are subjected to longer periods of pretrial custody and much longer sentences. The proposed changes would also create logistical nightmares for adult institutions suddenly faced with having to protect younger inmates and provide legally required services such as education. [see additional comments for **Section 26** on fitness/transfer to adult court.]

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
		See previous page.	Newly added section 602(c) provides that cases brought under section 602(b) shall proceed in adult criminal court unless the minor prevails in a motion to dismiss for failure of the prosecutor to establish probable cause that the minor committed an offense listed in 602(b). Section 602(d) provides that no minor under age 16 may be housed in a Department of Corrections facility. Also SB 334 (§14) amends section 606 to provide that minors may be prosecuted in adult criminal court only after a finding of unfitness or through the newly enacted transfer provisions under section 707.01(b).	

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Juvenile Criminal History Reporting Requirements (Section 19)	Current law does not require or even authorize a juvenile court to report the complete criminal history of a minor adjudged to be a ward of the court to the State Department of Justice. Current law does permit access to juvenile court records in connection with juvenile court proceedings and for other agencies coming in contact with the minor. Thus, section 827(a)(1) of the Welfare and Institutions Code permits the following parties to inspect the juvenile court and probation files of an adjudicated minor: (A) Court personnel; (B) The district attorney or city attorney; (C) The minor him or herself; (D) The minor's parent or guardian; (E) Attorneys for the parties actively participating in juvenile or criminal proceedings involving the minor, and judges, hearing officers, probation officers and law enforcement officers actively participating in the case; (F) The superintendent of the school district that the minor attends; (G) Child protective services (P.C. § 11165.9) (H) The state department of social services (Family Code §7900) (I) Legal staff or investigators in relation to standard of care in community care facilities; (J) Members of multidisciplinary teams or service providers treating the minor; (K) Other persons as ordered by judge after filing a petition. Section 827.1 of the Welfare and Institutions Code also requires that, within 7 days of a minor's felony conviction, the juvenile court provide written notice of the conviction to the sheriff of the county where the minor resides and, if different, to the sheriff of the county where the crime was committed. Section 827.6 of the Welfare and Institutions Code also permits the juvenile court to authorize release of confidential information on an adjudicated minor when such information is necessary for law enforcement officials to apprehend a minor who is a suspect in a felony. The information that can be released includes the minor's name and other information necessary for identification of the minor only.	Section 19 would add Section 602.5 to the Welfare and Institutions Code, which would require the juvenile court to report the complete criminal history of each minor adjudged to be a ward of the court under Section 602 (for any felony offense) to the State Department of Justice and would require the DOJ to retain this information and make it available to the same extent as it does the criminal histories of adults.	SB 334 (§20) adds Welfare & Institutions Code section 725.1, requiring the juvenile court to report to the Department of Justice the complete criminal history of any felony contained in Penal Code sections 667.5 (violent felonies) or 1192.7 (serious felonies); and requires DOJ to retain this information and make it available to the same extent it does the criminal histories of adults.	The proposed change would eviscerate the confidentiality of juvenile court proceedings that has been a cornerstone of the juvenile system for many years. Current law and the recent changes enacted by SB 334 already strike a balance between law enforcement and official agencies' "need to know," and the desire to protect juvenile offenders from the stigma and closed avenues of opportunity that accompany their categorization as "criminals." SB 334 assures that the records of serious and violent offenders will be transmitted to the Department of Justice, while maintaining confidentiality for less serious offenders.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Detention of Minor Suspects (Section 20)	Section 625.3 of the Welfare and Institutions Code provides that a suspect who is a minor must be detained pending an appearance before a judge if he or she was taken into custody for the personal use of a firearm in the commission or attempted commission of a felony.	Section 20 would amend section 625.3 by adding to the list of activities for which a minor suspect must be detained pending an appearance before a judge. The initiative would require mandatory detention for any offense listed in Section 707(b) of the Welfare and Institutions Code. Section 707(b) currently includes 28 offense categories.	SB 334(§15) amends section 625.3 to specify that the current automatic detention for minors allegedly using or possessing firearms applies to minors 14 and older; that the juvenile court may order a mental health evaluation of such minors; and that any firearms found on the person of the minor must be confiscated.	Most youth alleged to have committed 707(b) offenses are already detained pending the initial court hearing under current law. The initiative's proposed change unnecessarily removes needed discretion for those cases in which secure detention is not required to protect public safety or the safety of the minor.
Conditions for Release of a Juvenile from Custody (Section 21)	Section 629 of the Welfare and Institutions Code specifies that, as a condition of a minor's release from temporary custody, a probation officer may require the minor and/or his parent or guardian or relative to sign a written promise that either or both of them will appear before the probation officer at the juvenile hall or other suitable place designated by the officer at a specified time.	Section 21 would amend Section 629 by adding subdivision (b), providing that for minors over the age of 14 who are detained for commission of a felony or attempted felony, the minor may not be released until the minor and/or his parent or guardian or relative sign a promise to appear before the probation officer or in juvenile court on a specified date. This amendment would make the written promise to appear a mandatory condition of release for such minors.	SB 334 (§17) amends section 629 to require that as a condition f release from custody under section 628.1 (home supervision), section 631(initial detention at arrest), or section 632 (detention hearing) the minor must sign, and provides that the parent or guardian may be required to sign, a promise to appear before the probation officer or other designated place at a specified time.	Problems could potentially arise if, under the proposed change, the probation officer demands a parent's written promise to appear and the parent is unavailable or refuses to sign, resulting in continued detention of a minor who would otherwise have been released. SB 334 imposes a more sensible solution.
Limitations on Eligibility for Informal Probation (Section 22)	Section 654 of the Welfare and Institutions Code allows the probation officer to place certain youth in delineated programs of informal supervision instead of proceeding with a formal juvenile court petition. Under such a program, the minor could be involved in a range of services such as drug treatment, family counseling, shelter care placement., or vocational training. Under section 653.4 a minor is ineligible for such informal supervision (§ 654), under any of the following circumstance: (a) The minor is accused of committing one of the 28 misdemeanors or violent felonies listed in Welf. & Inst. Code section 707(b). (b) The minor is accused of selling or possessing for sale a controlled substance. (c) The minor is accused of specific offenses at a public or private elementary or high school., including possession of controlled substances, assault with a deadly weapon or bringing guns or weapons to school. (d) The petition alleges violation of section 186.22, for active participation in a criminal street gang and willfully promoting its felonious activity. (e) The minor has previously participated in an informal supervision program (§ 654). (f) The minor was previously adjudged to be a ward of the court (§ 602). (g) The restitution owed to the victim as a result of the alleged offense exceeds $1000.	Section 22 would amend Section 654.3 by expanding the list of circumstances under which a minor would be ineligible for an alternative program of supervision under section 654. The initiative would add section 654.3(h) to preclude informal supervision where: (h) The minor is alleged to have committed a felony offense when the minor was at least 14 years of age. to include a minor 14 or older who is alleged to have committed any felony offense. Except in unusual cases where the court determines the interests of justice would best be served by a proceeding pursuant to section 654 or 654.2 such cases shall proceed under the provisions for formal proceedings (W& I § 675).	No related provisions.	The proposed change would treat juveniles who don't get into trouble until they are older worse than those who commit crimes when they are younger. Moreover, in making informal supervision available to minors over 14 alleged to have committed a felony only in "unusual circumstances," the juvenile court system would lose a valuable program option. Prosecutors in many jurisdictions almost always file petitions as felonies, even though many cases ultimately will be determined to merit a misdemeanor after further investigation. Such routine "overfiling" would effectively eliminate informal supervision for juveniles 14 and older. This would not be a good change. California should be putting more resources into front end intervention, not fewer.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Serving Notice of a Juvenile Court Petition (Section 23)	Section 660 of the Welfare and Institutions Code provides for the following with respect to serving notice of a juvenile court petition.: • (b) If the minor has been detained, the juvenile court clerk must serve notice and a copy of the petition on all persons required to receive notice, either in person or by certified mail, as soon as possible after the filing of the petition and at least five days prior to the dispositional hearing date. • (c) If the minor is not detained, the juvenile court clerk shall serve notice and a copy of the petition on all parties required to receive notice, either personally or by first-class mail, at least 10 days prior to the dispositional hearing date. Failure to respond to the notice shall not result in arrest or detention, and the court shall then direct that the notice and a copy of the petition be personally served. However, personal service is not required if the whereabouts of the minor are unknown, and there is a showing that all reasonable efforts to locate the minor have failed or the minor has willfully evaded service of process, and the minor may be arrested.	Section 23 would amend section 660 by eliminating the requirement that there be a showing that reasonable efforts to locate the minor have failed or that the minor has willfully evaded service of process. This will allow for the arrest of a minor whose whereabouts are unknown and who has failed to respond to the first class mailing.	No related provisions.	The proposed change removes any meaningful requirement that the court clerk attempt to locate minors who do not respond to initial notices sent by first class mail. This will result in unnecessary arrest and detention of minors who have moved since the alleged incident (or those who are homeless or transient), when they may easily have been located through minimal efforts to locate them at school, through relatives, or other community agencies. This is especially a problem in counties where petitions for non-detained petitions are filed many months after the alleged incident occurred, and the minor and family are not aware that the court may still be interested in contacting them.
Issuing of Arrest Warrants for Minor Suspects (Section 24)	Section 663 of the Welfare and Institutions Code allows for arrest warrants to be issued for minors for whom delinquency or status offender petitions have been filed in juvenile court if one of the following conditions is satisfied: • (1) It appears that the conduct of the minor may endanger the health and welfare of him or herself or others or that the circumstances of his or her home environment may endanger his or her health or welfare; • (2) It appears that either personal service of notice of the petition upon the minor has been unsuccessful or that the whereabouts of the minor are unknown and all reasonable efforts to the minor have failed; • (3) It appears that the minor has willfully evaded service of process.	Section 24 would amend Section 663(2) by eliminating the requirement that all reasonable attempts to locate a minor suspect whose whereabouts are unknown be made before an arrest warrant for that minor can be issued.	No related provisions.	As in section 23, the elimination of a requirement that reasonable efforts be made to locate the minor before an arrest warrant is issued, is ill-conceived. Many minors have simply moved, and could be easily located and served with minimal effort. The proposed change will result in unnecessary detention of minors and added cost to the taxpayers.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Confidentiality of Juvenile Court Proceedings (Section 25)	Section 676 (a) of the Welfare and Institutions Code generally prohibits members of the public from attending juvenile court proceedings unless requested by the minor involved and/or his or her parents or guardian. In addition up to two family members of a prosecuting witness may attend to provide support for such witness, and the judge may admit those persons he or she deems to have a direct and legitimate interest in the particular case. However, these rules do not apply in proceedings where the petition alleges violation of any one of 28 offenses listed in 676(a). In those cases, members of the public shall be admitted as in any adult court proceeding. . . . . Section 676 (c) also does not permit the name of a minor convicted of one of the 28 listed violent felonies to be kept confidential unless the court, <u>for good cause</u>, so orders. Section 676(e) also provides that the minor's probation officer may petition the juvenile court to prohibit public disclosure of any file or record. The court must prohibit public disclosure of any such file or record pertaining to the minor's case if it appears that the harm to the minor, victims, witnesses or the public from the disclosure outweighs the benefit of public knowledge. Current law does not provide for the posting of a written list of hearings open to the public.	Section 25 would amend Section 676 in the following ways: • (a)(16) would add to the list of 28 offenses for which juvenile court proceedings are open to the public, the use of a firearm in the commission of specified felonies (P.C. §12022.53). • (c) would specify that "good cause" for the purposes of ordering a adjudged minor's name to be kept confidential be limited to protecting the personal safety of the minor, a victim, or a member of the public. The court would be required to make a written finding, on the record, of the "good cause" justifying confidentiality. • (e) would be amended to add that the court shall not prohibit disclosure for the benefit of the minor unless the court makes a written finding that the reason for the prohibition is to protect the safety of the minor. • (g) would be added to section 676 requiring that a juvenile court, for each day it is in session, post in a conspicuous place accessible to the general public a written list of hearings that are open to the general public, and the location and times when the hearings will be held.	SB 334 (§18) amends section 676 in the following ways: • (a) retains the same list of 28 offenses in which the public may be admitted • A new (b) remains unchanged • (c) provides for up to 2 family members or support persons, of the choosing of a prosecution witness to attend juvenile proceedings (P.C. § 868.5) [This provision was previously in (a)] • A new (d) proving for the judge to admit to juvenile proceedings persons he or she deems to have a direct and legitimate interest in the case or the work of the court. [This provision was previously in (a)]. • A new (e) provides that the name or a minor shall not be confidential where the minor is found to have committed one of the 28 offenses in (a) unless the court, for <u>good cause</u>, so orders. [This provision was in (c)]. • A new (f) provides for public inspection of court orders and minutes of proceedings for cases involving one of the offenses in (a). [This provision was previously in (d)]. • A new (g) permits the probation officer to petition the juvenile court to prohibit disclosure to the public of any file or record. The court must prohibit public disclosure or if it appears that the harm to the minor, victims, witnesses or the public from disclosure outweighs the benefit of public knowledge. [This provision was in (e)]. . . . . • A new section(i) provides that, unless requested by the minor, and by any parent or guardian, the public shall not be admitted to juvenile court hearings except as provided by this section. [This provision was in (a)]. • A new section (j) provides for the court to post daily public notices of juvenile court proceedings open to the public.	The initiative would unduly restrict the circumstances in which the juvenile court could maintain the confidentiality of juveniles accused of specified crimes. There is no indication that juvenile courts have abused their discretion in relation to confidentiality; current law and SB334 already accommodate any need for open hearing and disclosure of records in serious cases.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Fitness of a Minor for Juvenile Court Jurisdiction (Section 26)	Section 707 of the Welfare and Institutions Code provides for a judicial determination that certain minors against whom a delinquency petition has been filed are unfit for handling in the juvenile system: 707(a) When the petition is for a minor who is alleged to have committed a felony offense at age 16 or older, for any offense except those listed in subdivision (b), the minor is presumed fit, but the court may find the minor unfit for juvenile court jurisdiction if, upon examination of the probation officer's report on the minor's behavioral patterns and social history, the court concludes the minor would not be amenable to the care, treatment and training programs available through the juvenile court and such conclusion is based on one or more of the following five criteria: (1) The degree of criminal sophistication exhibited by the minor. (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction over him or her. (3) The minor's previous delinquent history. (4) Success of previous attempts by the juvenile court to rehabilitate the minor. (5) The circumstances and gravity of the offense alleged in the current petition. 707(b)A different standard, which presumes that the minor is unfit to remain in juvenile court, is set forth in section 707(c). That standard applies if the minor is 16 or older and is alleged to have committed one of the following 28 offenses (set forth in section 707(b)): (1) Murder (2) Arson (P.C. §451 (a) or ((b)) (3) Robbery while armed with a dangerous or deadly weapon (4) Rape with force or violence or threat of great bodily harm (5) Sodomy by force, violence, duress, menace or threat of bodily harm (6) Lewd or lascivious acts (P.C. § 288(b)) (7) Oral copulation by force, violence, duress, menace or threat of great bodily harm (8) Any offense in P.C. § 289 (a) [penetration of genital or anal openings by foreign object (9) Kidnapping for ransom (10) Kidnapping (P.C. § 209(b)	Section 26 would amend section 707 in the following ways: The initiative would add a paragraph (a)(2) providing that minor 16 or older for whom a motion for unfitness has been filed based on his alleged commission of any felony offense would be presumed by the juvenile court to be unfit for its jurisdiction if such minor has been adjudged on one or more prior occasions to be a ward of the court and was found to have committed two or more prior felonies after the age of 14. The presumption of unfitness could be overcome only upon a finding by the juvenile court that the minor is fit on each of the five criteria (see current § 707(a)). If such a minor is found fit to remain in the juvenile system, he or she must be placed in a juvenile hall, ranch camp, forestry camp, boot camp, secure juvenile home or the Youth Authority. The initiative would add paragraph 707(a)(3), permitting judges in cases in which a minor found unfit under (a)(2) is later tried and convicted in criminal court, to commit such minor to a term in the Youth Authority rather than a term in state prison unless the minor is convicted of a violent or serious felony and sentenced by the jury to life, an indeterminate period to life, or a determinate period such that number of years, when added to the minor's age, exceeds 25 years. (W&I §1732.6). (b) and (c): The initiative would amend 707(c) so that the age at which a minor is presumed unfit for juvenile court jurisdiction if he or she is alleged to have committed one of the violent felonies listed in Section 707(b), would be lowered from 16 to 14. As in proposed (a)(3) above, the initiative would permit adult criminal court judges to commit to the Youth Authority minors found unfit pursuant to 707(c) and then tried and convicted in criminal court, unless the minor is convicted of a violent or serious felony and sentenced by the jury to life, an indeterminate period to life, or a determinate period such that number of years, when added to	SB 334 (§12) adds Penal Code section 1170.17 governing sentencing in cases resulting from cases handled in adult court. • 1170.17(a) provides that when a person under 18 is subjected to direct filing in adult criminal court and is convicted, the person is subjected to the same sentence as an adult convicted for the same offense, subject to the limitations of section 1170.19(a) except as provided in (b) or (c). • 1170.17(b) provides that when the minor is convicted for a type of offense which, in combination with his or her age, makes the minor eligible for transfer to adult court pursuant to a rebuttable presumption of unfitness for juvenile court, then the minor (1) is subject to the same sentence as an adult convicted for the same offense, subject to the limitations of section 1170.19(a), unless (2) after a motion by the minor, the court orders the probation department to prepare a social study and recommendation on the minor's fitness to be dealt with under juvenile court law, and the court then either conducts a fitness hearing or remands the case to juvenile court for a social study and finding on fitness. The person may receive a juvenile court disposition only if it is demonstrated by a preponderance of evidence that he or she is fit to be handled under juvenile court law on all 5 of the criteria (same criteria as in 707(a)). Otherwise the court in which the minor was convicted must impose an adult sentence in accordance with section 1170.17(b)(1). • 1170.17(c) provides that where the minor is convicted for any type of offense which, in combination with his or her age, makes the minor eligible for transfer to adult court pursuant to a rebuttable presumption of	In eliminating judicial determinations of fitness in some cases (section 18) and greatly expanding the categories of cases which juveniles will be presumed unfit for juvenile court treatment, the initiative would eliminate an important set of checks and balances against abuses of prosecutorial power. In many jurisdictions prosecutors file the most serious possible offense with the idea that the charges may later be reduced if further investigation shows that they could not be proved. The initiative provides no safeguards against such overfiling. Juveniles would be tried in adult court or presumed unfit based on hasty or even politically motivated prosecutorial decisionmaking. In addition, the initiative provides no protections for minors transferred to adult court on an initial filing decision, but who are later found guilty of a less serious offense. In contrast, SB 334 permits "reverse" transfer to juvenile court at least in direct file cases. Once in adult criminal court, these 14 to 17 year olds will be dealt with by a system that is not trained to or equipped to deal with adolescents. Growing research from states such as Florida, Minnesota and New York which have substantially expanded transfer to adult court indicates that youth in the adult system have higher recidivism rates than similar youth who stay in the juvenile system., and that juvenile crime rates in general are higher than in other states. Research has also established that youth in adult institutional settings are much more likely to be sexually assaulted, beaten and attacked with a knife than youth in juvenile facilities. For those youth who escape institutional abuse, incarceration in the adult system may ensure they grow up to be hardened criminals. By mixing them with adult inmates, they may solidify gang ties and spend their time learning the wrong kind of skills.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
	(11) Kidnapping with bodily harm (12) Attempted murder (13) Assault with a firearm or destructive device (14) Assault by means of force likely to produce great bodily injury (15) Discharge of a firearm into an inhabited or occupied building (16) Any offense in P.C. § 1203.09 [crimes against persons who are over 60, blind, paraplegic, quadriplegic or in a wheelchair] (17) Any offense in P.C. 12022.5 or 122022.53 [use of firearm in commission of felonies] (18) Any offense in which the minor personally used a firearm in commission of felonies (P.C. § 12020(a)) (19) Any felony offense in P.C. 136.1 [intimidating witnesses] and 137 [influencing testimony or information to law enforcement] (20) Manufacturing or selling more than half an ounce of specified controlled substances (H&S § 11055(e)) (21) Any violent felony (P.C. § 667.5(c)) which would also constitute a felony violation of P.C. § 186,22(b) [active participation in criminal street gang (22) Escape by force or violence from a county juvenile facility (W&I § 871(b)) where there is great bodily injury to a facility employee (23) Torture (P.C. § § 206, 206.1) (24) Aggravated mayhem (P.C. § 205) (25) Carjacking (P.C. § § 215) while armed with a dangerous or deadly weapon (26) Kidnapping (P.C. § 209.5) (27) Violation of P.C. 12034 [permitting firearms in a vehicle or discharging firearms from a vehicle]. (28) Violation of P.C. § 12308 [explosion of destructive device with intent to commit murder] 707(d) (1) In cases where the minor is 14 or 15 (less than 16) and is alleged to have committed one of the offenses listed in (d)(2), the court <u>may</u> find that the minor is unfit for handling in the juvenile court based on one or more of the 5 specified criteria (see § 707(a)). The offenses listed in (d)(2) are: (A) Murder, (B) Robbery with personal use of a firearm, (C) Rape with force or violence or great bodily harm, (D) Sodomy by force, violence, duress,	the minor's age, exceeds 25 years (W&I § 1732.6). The list of felonies under Section 707(b) for which a minor (age 14 and older) would be presumed unfit for juvenile court jurisdiction would be expanded to include: a change to (b)(3) to eliminate the requirement that the robbery be committed while armed with a dangerous or deadly weapon. Under the initiative <u>any robbery</u> would come within(b)(3). In addition, a new paragraph (b)(30) Voluntary manslaugther (P.C. § 192) would be added. The initiative would eliminate current section (d), providing for unfitness of 14 and 15 year olds, since proposed changes to 707(c) would reduce the age for presumptive unfitness for many offenses to 14. A new 707(d) (1) would permit prosecutors to <u>directly file</u> accusatory pleadings directly in criminal court [i.e., without a fitness hearing in juvenile court] against minors 16 years of age or older, if such minor is accused of committing a 707(b) offense. A new 707(d)(2) would permit prosecutors to file accusatory pleadings directly in adult court [i.e., without a fitness hearing in juvenile court] against minors 14 years or older if such minor: • is alleged to have committed an offense punishable by death or life imprisonment • is alleged to have personally used a firearm during the commission or attempted commission of a felony (P.C. § 12022.5) • is alleged to have committed a 707(b) offense in which one or more of the following apply: (i) the minor has previously been adjudged by the juvenile court to have committed a 707(b) offense; (ii) the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang (P.C. § 186.22(f)) to promote, further or assist criminal conduct by gang member; (iii)	<u>fitness</u> for juvenile court, then the minor (1) must receive a juvenile court dispsosition unless (2) the district attorney prevails upon a motion, and the court orders the probation department to prepare a social study and recommendation on the minor's fitness to be dealt with under juvenile court law, and the court then either conducts a fitness hearing or remands the case to juvenile court for a determination of fitness. The minor shall receive a juvenile court disposition unless the district attorney prevails by a preponderance of evidence on all 5 criteria (same criteria as in 707(a)), in which case the minor shall be subject to an adult court sentence in the court where he or she was convicted, pursuant to 1170.19(c)(1). • 1170.19(d) clarifies that for cases in which the minor is not eligible for transfer to adult court, the person must receive a juvenile court disposition (§1170.19(b)). SB 334 also enacts section 1170.19(a) clarifying that for minors sentenced under section 1170.17: • (a)(1) the person may be committed to the Youth Authority only to the extent they are under 1732.6 (i.e., not convicted of a violent or serious felony and sentenced to life, an indeterminate period to life, or a determinate period such that when added to the minor's age exceeds 25 years); • (a)(2) no person under 16 years may be housed in a Department of Corrections facility; • (a)(3) the person's records are open to public access to the same extent as an adult convicted for the same offense; and • (a)(4) with the consent of the prosecutor and the minor, the court may order a juvenile court law disposition upon a	Again, SB 334 (§12.2) amends Welfare and Institutions Code section 602 to add subdivision (a) requiring for automatic, direct filing in adult court for minors age 16 or older alleged to have committed specified offenses (including murder, attempted murder, rape, spousal rape, forcible sex offenses in concert with another, forcible lewd and lascivious act on a child under 14, forcible penetration by a foreign object, sodomy or oral copulation by force, aggravated kidnapping, and suspected felonies (P.C. § 12022.53) with use of a firearm, where the minor also has a prior adjudication for a felony, committed after the age of 14). The initiative would go much further in expanding the class of minors subjected to adult court handling. The initiative has no provisions for "reverse transfer" to assure that children whose cases are automatically filed in adult court may be transferred to juvenile court if it turns out that a mistake was made, or they are found guilty of a less serious offense.

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	menace or threat of great bodily harm, (E) Oral copulation by force, violence, duress, menace, or threat of great bodily harm, (F) P.C. § P.C. 289(a)[genital or anal penetration by foreign object], (G) Kidnapping for ransom, (H) Kidnapping (P.C. § 209(b), (I) Kidnapping with bodily harm, (J) Kidnapping (P.C. § 209.5), (K) P.C. § 12034 with personal use of firearm, (L) personally discharging a firearm into an inhabited building, (M) Manufacturing or selling a controlled substance (H&S § 1055(e)), (N) Escape from a juvenile facility (§ 871(b)) with infliction of great bodily injury to an employee, (O) torture (P.C. § 206), (P) Aggravated mayhem (P.C. § 205), (Q) Assault with personal use of a firearm, (R) Attempted murder, (S) Rape with personal use of a firearm, (T) Burglary with personal use of a firearm, (U) Kidnapping with personal use of a firearm, (V) P.C. 12308 [explosion of a destructive device with intent to commit murder], (W) carjacking with personal use of a firearm. (d)(2) In cases where the minor is 14 or 15 (less than 16) and the allegations include (1) first or second degree murder where the minor personally killed the victim; (2) first or second degree murder where the minor, with the intent to kill, aided and abetted any person in the killing of the victim; (3) first degree murder where the minor was not the killer , but acted with reckless indifference to life in the commission or attempted commission of a felony (P.C. §190.2(a)(17), resulting in a death, such minor is presumed to be unfit for juvenile court jurisdiction unless the court concludes, based on all five of the above-mentioned criteria (see § 707(a)), that the minor would be amenable to the juvenile court's rehabilitation programs.	the offense was committed for the purpose of interfering with any person's free exercise of state or federal constitutional rights and because of the person's race, color, ancestry, national origin, disability, gender, sexual orientation (or the minor's perceptions of such characteristics)(P.C. § 422.61); or the victim was 65 years or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that was known to the minor at the time of the offense. A new 707(d)(3) would allow prosecutors to file accusatory proceedings directly in criminal court (i.e., without a fitness hearing in juvenile court] against minors 16 years of age or older, if such minor has previously been adjudicated a ward of the court for violation of any felony offense when he or she was 14 or older; and the current alleged offense is: • Any felony offense victim was 65 or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that was known to the minor at the time of the offense. • Any felony offense committed for the purpose of interfering with any person's free exercise of state or federal constitutional rights and because of the person's race, color, ancestry, national origin, disability, gender, sexual orientation (or the minor's perceptions of such characteristics)(P.C. § 422.6); • The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by P.C. § 186.22.) A new section (d)(4) would provide that direct file cases would proceed according to the laws applicable to a criminal case, but that there must be a finding of reasonable cause that the minor comes within this subdivision at the time of the preliminary hearing (P.C. § 738). If reasonable cause is not established, the case must be	finding that it would serve the best interests of justice, protection of the community and the person being sentenced. A social study must be prepared and considered before such a disposition is ordered. • (b) In cases where the minor is eligible for a juvenile disposition under 1170.17, the court in which the conviction occurred shall (prior to conducting the hearing or remanding the case to juvenile court: • (b)(a) order the probation officer to prepare a social study and recommendation on the proper disposition of the case and the minor is entitled to a disposition hearing conducted under the provisions of section 706 for juvenile court disposition hearings; • (b)(2) the minor's conviction is then deemed to be a finding of delinquency under Welfare and Institutions Code section 602; • (b)(3) the minor's criminal court records are to be accorded the same degree of confidentiality as if the matter had been initially prosecuted in juvenile court; and • (b)(4) with the consent of the prosecution and the minor, the court may impose an adult sentence upon a finding that it would serve the best interests of justice, protection of the community ahd person being sentenced. A social study must be prepared and considered before such a sentence is ordered. SB 334 (§ 12.2) adds a section 602.5 similarly providing for direct file cases to proceed in criminal court unless the minor prevails on a motion to dismiss (P.C. § 995) for failure of the prosecutor to establish probable cause. However, SB 334 has no provision for transfer to juvenile court in these circumstances.	The initiative's expansion of ages and categories of crimes for which minors must or may be handled in adult court will result in many more children being relegated to the adult system. This would be a big mistake. These juveniles will be released from custody at some point, and without having received rehabilitative services, they will be ill equipped to successfully reintegrate into the community. This would result in almost certain recidivism at tremendous cost to the taxpayers. Again, our justice system is founded on a system of checks and balances, and the changes proposed by the initiative upset that balance by placing unbridled discretion in the hands of prosecutors. Moreover, there is no evidence to suggest that improper fitness or sentencing decisions have been made under current law. And again, handling more 14, 15, 16 and 17 year olds in the adult system will result in a bigger class of career criminals for taxpayers to support. Many of the youth who would be handled in the adult system under the initiative would otherwise move beyond adolescent criminality. The initiative decreases their chances of making that successful transition, since they will be forced to spend many years in punitive settings and won't know how to function appropriately in the community.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
		transferred to juvenile court. A new (d)(5) would provide that, for any offense for which a prosecutor could proceed against a minor in criminal court but chooses not to, the minor, if found to come within the jurisdiction of the court under 602, shall be committed to juvenile hall, ranch camp, boot camp, a secure juvenile home, or Youth Authority facility. A new (d)(6) would provide that, if a minor is found unfit for juvenile court treatment and is then tried and convicted in criminal court pursuant to 707(d), the court may commit the minor to Youth Authority, unless the minor is convicted of a violent or serious felony and sentenced by the jury to life, and indeterminate period to life, or a determinate period such that the number of years, when added to the minor's age, exceeds 25 years. (W&I § 1732.6).	SB 334 (§13) adds section 602.5 requiring that: (a) where the minor has committed a violent felony (P.C. § 667.5(c)) with personal use of a firearm, the court shall commit the minor to a juvenile hall, ranch, camp or the Youth Authority; and (b) the court may, instead, impose a treatment-based placement if the minor has a mental disorder requiring intensive treatment.	The initiative does not have the kind of provision contained in SB 334 for commitment to a treatment based placement for minors requiring intensive treatment. This is a serious omission since many youth in the juvenile justice system have serious mental health needs and many facilities to which minors may be committed under the initiative would not have adequate resources to address their needs.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Modifying Juvenile Court Dispositions of Status Offender and Delinquent Minors (Section 27)	Section 777 of the Welfare and Institutions Code allows the juvenile court to change or modify a previous court order by removing a minor from the custody of his or her parents or otherwise placing the minor in a more restrictive out of home placement only after a hearing on a supplemental petition. Under 777(a), the probation officer may file the petition in status offender cases (§601) and in cases alleging a probation violation not amounting to a crime. The prosecutor may file supplemental petitions after consulting with the probation officer for violations not amounting to a crime, and must file any supplemental petitions arising from violations which amount to a new crime. Where the supplemental petition alleges a violation of probation and calls for the commitment of the minor to 30 days or less in a county juvenile institution or a less restrictive disposition, section 777(b) clarifies that the petition does not have to allege that the previous disposition was ineffective for in the rehabilitation and protection of the minor. However, even in that situation, before a commitment of more than 15 days is ordered, the court must determine and consider the effect an extended commitment would have on the minor's schooling, loss of credits and current employment. Sections 777(c) and (d) provide that the time limits and procedural protections for detained minors in original § 602 petition proceedings also apply to minors in supplemental petition proceedings. Section 777(e) permits the court to impose up to 30 days of previously stayed confinement time upon a finding, at a hearing that the minor has violated a condition of probation. The California Supreme Court has ruled that supplemental petitions under 777(a) must be proved beyond a reasonable doubt. (In re Arthur N., 16 Cal.3d 226 (1976), and appellate rulings have confirmed that hearsay evidence is inadmissible to the same degree that it would be in juvenile court proceedings. In re Antonio A., 225 Cal. App. 3d 700 (1990).	Section 28 would eliminate the requirement that a formal supplemental petition be filed to modify a previous disposition, and would instead require only that a "noticed" hearing take place. The "notice" is not required to contain "facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor. Instead, the notice must contain only facts sufficient to support the conclusion that the minor has violated an order of the court, or a violation of probation not amounting to a crime. The initiative would eliminate section 777(b) governing commitments of up to 30 days, and requiring the court to consider the impact of commitment on school, credits and employment for commitments of 15 to 30 days. The initiative would renumber current (c) as (b), and substitute a new (c) stating that the facts at the "noticed" hearing need only be proved by a preponderance of the evidence. In addition, the court would be allowed to admit "reliable hearsay evidence" as in an adult probation revocation hearing (People v. Brown, 215 Cal. App. 3d (1989). The initiative would eliminate section 777(e) governing probation violation hearings.	No related provisions	The consequences of supplemental proceedings are quite serious -- the whole purpose is to place minors in more restrictive settings, up to and including the Youth Authority. Since this may be done for transgressions that do not constitute new crimes, the strong protections of current law are needed to guard against flimsy "evidence" which cannot be tested through cross-examination. The initiative deliberately seeks to circumvent court rulings that protect minors' rights against the use of hearsay, and to proof beyond a reasonable doubt.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Sealing of Juvenile Court Records (Section 28)	Section 781of the Welfare and Institutions Code provides: (a) A person for whom a juvenile court petition was filed or who was cited to or did appear in front of a juvenile probation officer or law enforcement officer may, after five years have passed since the termination of juvenile court jurisdiction, citation to appear, or appearance, or at any time after the person reaches age 18, petition the juvenile court to seal all records related to the person's arrest and case that are in the custody of the court or any other agency or public official. The juvenile court shall grant the sealing request if it finds, after a hearing on the sealing petition, that in the five years since the termination of the person's case, he or she has not been convicted of any felony or misdemeanor involving moral turpitude and has been rehabilitated to the court's satisfaction. The juvenile court shall not order the records of a person sealed until 6 years following commission of the offense to which the records pertain if the person was found by the court to have committed one of the offenses listed in sections 707 (b) (d)(2), or (e) of the Welfare and Institutions Code. Once the juvenile court orders the records sealed, proceedings in the case shall be deemed to have never occurred. (b) Thecourt may open records otherwise sealed under this section in defamation actions upon a showing of good cause, but they must be resealed upon final judgment. . . . . (c) Special rules apply to certain Vehicle Code violations. (d) Unless it makes a good cause determination that the records should be retained, the juvenile court shall order the destruction of a person's sealed juvenile court records five years after the records were sealed if the person was adjudged to be a status offender (§601), or when the person reaches age 38 if he or she was adjudged to be a delinquent minor (§602). (e) Records may not be sealed where the person was convicted in adult criminal court (§707.1). (f) The records of a juvenile who was 16 or older at the time he or she committed a section 707(b) offense shall not be destroyed.	Section 28 would amend section 781 as follows: (a) the juvenile court would <u>never</u> be permitted to order a persons records sealed if the court had found the person to have committed one of the crimes listed in section 707(b) of the Welfare and Institutions Code at age 14 or older. . . . . d) The juvenile court would be prohibited from ever ordering the destruction of a person's records if he or she had been found to have committed one of the offenses listed in Section 707(b) of the Welfare and Institutions Code at 14 or older. [The initiative places this proposed change in (d); logically it goes in (f)].	No related provisions.	The proposed changes would move California even further away from the principles underlying a separate juvenile court system. Record sealing in juvenile cases has, for many years, been a part of our system which holds that juvenile offenders should be treated differently from adults because they are less mature and therefore more likely to exercise poor judgment. Record sealing has enabled young offenders to overcome their mistakes by allowing them to apply for school and jobs without the stigma of being a criminal. California has already moved away from a "pure" position on record sealing by imposing lengthy periods before sealing can occur and limiting it for older youth who commit serious violent felonies. Current law goes far enough. The initiative would take away the court's discretion to allow record sealing in too broad a range of cases.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
	(g) In criminal prosecutions alleging enhancements under Penal Code sections 667 [serious felonies] or 1170.12 [prior felony convictions for "strike" eligibility], the parties may inspect, copy and introduce juvenile court records for purposes of proving the enhancement, whether or not the records hav been sealed, if the minor was 16 or older at the time of the offense and was found to have committed a section 707(b) offense. If the enhancement is stricken or there is an aquittal, the records shall be resealed.			

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Deferred Entry of Judgment Procedure for Certain Minor Suspects (Section 29)	Current law does not provide for deferred entry of judgment in juvenile cases. Imposition of a more restrictive disposition or higher level of confinement requires a noticed hearing and proof beyond a reasonable doubt that the previous order of rehabilitation was ineffective (W&I § 777)	Section 29 would add Article 20.5 to the Welfare and Institutions Code sections 790 through 795, which to establish a deferred entry of judgment procedure , postponing the entry of judgment for eligible minors. Under section 790(a) an minor who is accused of committing a felony may be eligible for deferred entry of judgment if: 1) The minor has not previously been declared to be a ward for a felony; 2) the offense charged in the current petition is not one included in section 707(b) of the Welfare and Institutions Code; 3) the minor has not previously been committed to the Youth Authority; 4) the minor's record does not indicate that probation has been revoked without being completed; 5) the minor is at least 14 at the time of the hearing on the current petition; and 6) the minor is eligible for probation pursuant to Penal Code section 1203.06 [prohibiting probation for persons who personally used a firearm during the commission or attempted commission of specified offense, or who are convicted for aggravated arson in violation of P.C. § 451.5]. Under proposed section 790(b), the prosecutor shall, as soon as possible after the initial filing, determine whether the minor meets each of the above 6 requirements. Then, upon agreement of the prosecutor, the minor's attorney, and the judge, the prosecuting attorney shall file a declaration in writing or on the record, stating the grounds for the determination, and the juvenile court may set a hearing for deferred entry of judgment. If there is not agreement between the prosecutor, judge and the minor's attorney, the case proceeds as a regular juvenile petition proceeding.	No related provisions.	Proposed Section 29, in combination with Section 22, effectively eliminates informal supervision under Welf. & Inst. Code section 654 for minors 14 and older who are alleged to have committed a felony. It would substitute a deferred entry of judgment system which lacks even the most basic rudiments of due process, and which requires minors to admit far more serious allegations than the prosecutor could ever prove. [see specific comments on next pages.] Proposed section 29 would result in substantially increased workloads for the prosecutor, probation officer and defense counsel, and increased court costs for additional hearings required under the program. It would also result in substantial additional costs for incarceration, since disposition would be based on much more serious charges than if the case proceeded through normal processing.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
		Proposition section 791(a) provides for extensive notification to the minor, including: 1) deferred entry of judgment; 2) An explanation of the roles of probation, the prosecutor, the program and the court' 3) A clear statement that, in lieu of jurisdictional and dispositional hearings, if the minor admits each allegation contained in the petition and waives time for judgment based on successful completion of probation (§ 794), the positive recommendation of probation and motion of the prosecutor between 12 and 36 months. 4) A clear statement that failure to comply with the terms of probation, including the rules of the program the minor is directed to attend, and any circumstances in proposed § 793, the prosecutor, probation officer or the court may make a motion for entry of judgment, and court shall render a finding that the minor is a ward of the court under § 602 for the offenses in the original petition; 5) An explanation of the rules pertaining to records of the deferred entry of judgment, and rights of the minor relative to answering questions about participation in the program. 6) A statement that if the minor fails to comply with the terms of the program and judgment is entered, the offense may serve as a basis for unfitness under section 707(d), if the minor commits two additional felony offenses. Under proposed section 791 (b), if the minor consents and waives his or her right to a speedy jurisdictional hearing the case may be referred for an investigation by the probation officer whether the minor would benefit from education, treatment or rehabilitation. The probation officer shall report its findings and determine which programs would accept the minor. The court makes the final determination regarding education, treatment or rehabilitation. The court may also summarily order deferred entry of judgment before any	No related provisions.	Proposed section 791(a)(3) of the deferred entry of judgment system would be extremely unfair to minors in requiring them to admit each allegation in the petition to take advantage of the program. In many, many cases the prosecutor is unable to prove the initial charges filed, but under this proposed program, minors would have no way to force the prosecutor to prove the charges or to seek reduced charges if the judgment is later imposed.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
		investigation. Under proposed section 791(c) admission of the charges for purposes of deferred entry of judgement does not constitute a finding that a petition has been sustained unless judgment is later entered pursuant to section 793(b). Section 792 would provide for notice to the minor's parents or guardians to appear and bring the minor to court, and notice that the parents or guardians may be required to participate in counseling or education programs with the minor, under penalty of contempt (C.C.P. Section 170.6). Section 793(a) would permit the court to lift the deferred entry of judgment and schedule a disposition hearing if it appears to the prosecutor, probation officer, or court that the minor is "not performing satisfactorily" in the assigned program or is not benefiting from education, treatment or rehabilitation." Similarly, if the minor is declared a ward of the court for a felony or two misdemeanors during the period of deferred judgment, the judge shall enter judgment and order a disposition hearing. The court may enter judgment and order a disposition hearing for misdemeanor offenses on a single occasion during the period. Section 793(b) would require the court to report the minor's complete criminal history to the Department of Justice pursuant to section 602.5 if judgment previously deferred is imposed. Section 793(c) would provide that if the minor has performed satisfactorily during the period for which deferred entry of judgment was granted, the charges shall be dismissed at the end of that period, and the arrest shall be deemed never to have occurred. Any records in the juvenile court shall be sealed, except that the prosecutor and probation department shall have limited access for the purpose of determining future eligibility for deferred entry of judgment.		The "not performing satisfactorily" standard in proposed section 793(a) for judging compliance with the deferred entry of judgment program is frighteningly vague. The proposed standard fails to establish criteria by which performance may be measured, fails to delineate any standard of proof, and does not even appear to require a formal contested hearing before judgment may be imposed. When the stakes are so high (i.e., sentence on the original charges will be imposed and many such charges may constitute "strikes" for future sentencing) this represents an appalling lack of due process.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
		Proposed section 794 would require the judge to impose a requirement in all deferred entry of judgment cases that the minor submit to warrantless searches of his person, residence or property. It would allow the court to impose random drug or alcohol testing, conditions relating to curfew and school attendance, restitution or other conditions that would assist in the education, treatment and rehabilitation or the minor. Finally, section 795 would place responsibiilty with the county probation department for developing, supervising and monitoring minors on the deferred entry of judgment program.		
Required Notice to Law Enforcement Officials of a Minor's Past Commission of a Felony (Section 30)	Section 827.1 of the Welfare and Institutions Code requires the criminal or juvenile court in which a minor is found to have committed a felony to notify in writing, within 7 days of such finding, the sheriff of the county in which the felony took place and the sheriff of the county in which the minor lives of such a finding. The written notice must include only information regarding the offense and the disposition of the minor's case.The court must also notify the sheriff of any later modifications made to the disposition of the minor's case. Section 827.1 also permits the sheriffs who receive this information from the court to disseminate it to other law enforcement officials upon request if they reasonably believe that such information is generally relevant to the control or prevention of juvenile crime. Section 827.1 specifies that any information received pusuant to this section shall be received in confidence for the limited law enforcement purposes for which it was provided and shall not be further disseminated except as provided in this section.	Section 30 would renumber the statute as 827.2, and add a section (c) exception to the prohibition on public dissemination of information on a minor's criminal or juvenile delinquency case: Section 827.2(c) would allow a law enforcement agency to disclose to the public or any interested person the information received pursuant to this section if the minor was 14 or older at the time of commission of the felony and found to have committed a felony listed in Section 707(b) of the Welfare and Institutions Code, unless the juvenile court issues a written order forbidding such disclosure for good cause.	SB 334 (§23) provides for the amendment and renumbering of section 827.1 to put existing text in (a) and add (b), which provides for the court to authorize a sheriff receiving information under this section, in the written notice, that the sheriff may disclose this information where it is imperative for the protection of the public and the offense is a violent felony (P.C. § 667.5).	The proposed change completely undermines existing provisions and SB 334 amendment which provide records of juvenile felonies to the sheriff and to other law enforcement officials on a "need to know" basis, but otherwise protect minor's confidentiality.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Public Disclosure of the Name & Offense Allegedly Committed by a Minor (Section 31)	Under Section 827.5 of the Welfare and Institutions Code, a law enforcement agency may, upon the request of interested persons, disclose the name of any minor 14 or older taken into custody for the alleged commission of a serious felony (P.C. §1192.7) and the offense allegedly committed, if a hearing based on a delinquency petition alleging commission of the felony by the minor has already commenced.	Section 31 would amend section 827.5 by eliminating the requirement that a hearing involving the minor have already commenced and would permit disclosure of the minor's name and the offense allegedly committed, following the minor's arrest for that offense.	SB 334 amends section 827.5 by authorizing law enforcement release of a minor's name as soon as a juvenile court petition or a criminal complaint has been filed, if the minor is 14 or older and is alleged to have committed a serious felony. (P.C. § 1192.7)	SB 334 allows release of a minor's name upon the filing of a formal petition or complaint. This is preferable to the initiative's proposed change, since allowing release upon arrest might result in unfair stigma for youth later released because there is insufficient evidence to file charges.
Release of Juvenile Court Information on a Minor to Aid in His or Her Apprehension (Section 32)	Under Section 827.6(a), the presiding judge of the juvenile court may authorize a law enforcement agency, upon that agency's petition, to disclose only the name and other information necessary to identify a minor lawfully sought for arrest as a suspect in the commission of a felony listed in Section 707(b) of the Welfare and Institutions Code. In determining whether to authorize release of this information, the court must balance the confidentiality interests of the minor, the due diligence of law enforcement officials to apprehend the minor prior to filing the petition for release of the information, and the public safety issues raised by the facts of the minor's case. Section 827.6(b) also requires that the law enforcement agency requesting authorization to release such information submit a verified declaration and supporting exhibits indicating: • Probable cause for the arrest of the minor • Efforts to locate the minor (persons contacted, surveillance, search efforts) • All evidence showing why the release of such information is critical (i.e., the minor is a danger to him or herself, to others, or is a flight risk, or other information showing urgency)	Section 32 would eliminate all of the current provisions of section 827.6, and would also effectively replace current section 828.01 of the Welfare and Institutions Code, which "sunsets" into repeal January 1, 2000 (See Section 33 below). The proposed new section 827.6 would permit law enforcement agencies to release the name, description and alleged offense of any minor alleged to have committed a violent offense (P.C. §667.5) and against whom an arrest warrant is outstanding, if release of the information would assist in apprehension of the minor or protection of public safety. [Current section 828.01, effective only until Jan. 1, 2000, only allows release of such information when a minor 14 or older is accused of first or second degree murder where the minor personally killed the victim.]	SB 334 (§§25 and 26) repeals previous section 827.6 and adds a new 827.6 permitting law enforcement to release the name, description and alleged offense of any minor 14 or older alleged to have committed a violent felony (P.C. 667.5) and against whom an arrest warrant is outstanding if release is imperative to the apprehension of the minor, it is is necessary to protect the public and is authorized by the court in the arrest warrant or separate order. The release of information shall be solely for the purpose of apprehending the minor.	SB 334 adequately addresses the need for law enforcement agencies to disclose information needed to aid in the apprehension of minors sought for arrest in serious crimes.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Release of Law Enforcement Agency Information on a Minor Suspect to Aid in His or Her Apprehension (Section 33)	Section 828.01 of the Welfare and Institutions Code allows a law enforcement agency to release the name and any descriptive information about a minor 14 or older, and the offenses allegedly committed by such minor, if there is an outstanding warrant for the arrest of such minor for and offense described in section 707(e)(1) [the first or second degree murder in which the minor personally killed the victim].	The initiative includes a statement under Section 33 that "Section 828.01 of the Welfare and Institutions Code is repealed," but absent some intervening statute, the statute is set to be in effect only until January 1, 2000, even without the initiative. Again, Section 32 would amend section 827.6 of the Welfare and Institutions Code in such a way as to effectively continue the provisions of Section 828.01, with an expansion in the number of situations under which law enforcement is permitted to release information on a minor suspect.	SB 334 (§§ 25 and 26) provisions amending 827.6 provide for release of information to aid in the apprehension of youth suspected of serious felonies. These changes will remain in effect when section 828.01 is automatically repealed on January 1, 2000. [see **Section 32**]	Again, SB 334 provides a practical means for law enforcement release of information needed to apprehend minors in serious offenses..

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Commitment of a Minor to CYA or the Department of Corrections (Section 34)	Section 1732.6 of the Welfare and Institutions Code prohibits commitment to the Youth Authority if the minor is convicted of a violent (P.C. §667.5) or serious (P.C. § 1192.7) felony in adult criminal court and is sentenced to either life, an indeterminate period to life, or a determinate period of years such that the maximum number of years of potential confinement when added to the minor's age would exceed 25 years. In all other cases, section 1732.6 gives the criminal court discretion to commit the minor to either the Youth Authority or the Department of Corrections after the minor has been convicted of an offense in criminal court. Section 1732.6 also specifies that, not withstanding any other provision of the law, no minor under the age of 16 may be housed in a Department of Corrections facility,	Section 34 of the initiative would amend Section 1732.6 to add a subdivision (b) broadening the prohibition on Youth Authority commitments. New section 1732.6(b) would provide that no minor shall be committed to Youth Authority when convicted in a criminal action for: • An offense described in section 602(b) [murder with special circumstances; specified sex offenses – see section 18 of the initiative for list of offenses]; • An offense described in section 707(d), paragraphs (1), (2) or (3) [this is a list of offenses committed by minors 14 or older, including offenses punishable by death or life imprisonment, personal use of a firearm, commission of a 707(b) offense with a prior 707(b) offense, for the benefit of a criminal street gang , interfering with the rights of persons because of their race, disability, sexual orientation, etc., or other vulnerability such as age or disability -- see section 26 of the initiative for a list of offenses]; • An offense described in section 707(b) if the minor was 16 or older at the time of the offense [this is a list of 30 offenses, committed when the minor was 16 or older -- see section 26 of the initiative for a list of the offenses].	No related provisions.	Expanding the categories of youth who may not be committed to the Youth Authority would create big management problems for the Department of Corrections and county facilities where such youth will be backed up waiting for transfer. These 14, 15, 16 and 17 year olds will require educational services and housing considerations that the adult system is ill-equipped to provide and they will contribute to what is already a serious overcrowding crisis in the California institutional system.

Initiative Section	Current Law (without the changes enacted by Senate Bill 334)	Proposed Change	Related Provisions in Senate Bill 334 (effective January 1, 2000)	Policy Considerations
Intent to Apply the Broader "Active Participation" Standard to the Definition of "Participation in Criminal Street Gang" (Section 35)	Section 186.22 of the Penal Code does not clearly define the level of "active participation" necessary for an individual to be found to have either participated in a criminal street gang or committed a gang-related offense. In People v. Green, 227 Cal.App.3d 693 (1991)., the California Court of Appeals interpreted "active participation," for purposes of section 186.22, as requiring the devotion of all or a substantial amount of one's time to the criminal street gang. An earlier case, In re Lincoln J., 223 Cal.App.3d 322 (1990), offered in Section 35 as an alternative lower standard for "active participation," did not directly address that question., finding [in footnote 4] only that membership in the gang is not an essential element of "active participation" for conviction under section 186.22. [See Section 4]	Section 35 provides: "In enacting section 4 of this initiative, adding subdivision (I) to Section 186.22 of the Penal Code, it is the intent of the people to reaffirm the reasoning contained in footnote 4 of In re Lincoln J., 223 Cal. App. 3d 322 (1990) and to disapprove of the reasoning contained in People v. Green, 227 Cal App.3d 696 (1991) (holding that proof that "the person must devote all or a substantial part of his or her efforts to the criminal street gang" is necessary to secure a conviction under subdivision (a) of Section 186.22 of the Penal Code)." Section 35 would adopt the "active participation standard purportedly set forth in In re Lincoln J., which does not require that the accused have been a current or active member of the gang to violate Section 186.22 as long as the criminal conduct in which he or she engaged was for the benefit of, at the direction of, or in association with the gang.	No related provisions.	The proposed change is based on a tortured interpretation of a footnote in a case (In re Lincoln J.) that was actually decided on the basis of insufficiency of the evidence that there was a "criminal street gang," and not the constitutional requirements for "active participation." The impact of allowing so loose an interpretation of the law will fall heavily on minority youth who happen to live in areas of high gang activity.
Intent to Exempt Minors from the Proposed Death Penalty for Gang-Related Murders. (Section 36)	Section 190.5 of the Penal Code prohibits the imposition of the death penalty on any person for an offense he or she committed under the age of 18.	Section 36 clarifies that the proposed expansion of the list of felonies punishable by death under Section 190.2 of the Penal Code to include gang-related murders is not intended to include minors who commit such murders among those convicted persons who can be sentenced to death.		This proposed provision offered to clarify that even if the initiative broadens the definition of special circumstances to include gang related murders, there is no intention to allow the death penalty to be imposed on juveniles committing gang-related murders.

Thanks to Youth Law Center Law Clerk, Darius Charney, for his assistance in the preparation of this analysis.

Table of Contents

I. Prosecutor's direct filing in criminal court without fitness proceedings

A. Prosecutor *must* file in criminal court if the youth is 14 or older and has allegedly personally committed first-degree murder with special circumstances or a serious sex offense listed in Welfare and Institutions Code section 602.[1] (§ 602(b).)

B. Prosecutor *may* file in criminal court without fitness proceedings if:

1. Youth is 16 or older and has allegedly committed a felony listed in section 707(b). (§ 707(d)(1).)
2. Youth is 14 or older and one or more of the following apply:
   a. Felony is punishable by death or life imprisonment in adult prison;
   b. Firearm was used to commit felony;
   c. Youth has allegedly committed 707(b) offense and
      i. Youth committed prior 707(b) offense;
      ii. Alleged current 707(b) offense is a criminal street gang offense or a hate crime; or
      iii. Victim was older than 65 or was disabled.

   (§ 707(d)(2).)
3. Youth is 16 or older, commits prior offense when 14 or older, and one or more of the following apply:
   a. Victim of the present alleged offense is 65 or older or disabled;
   b. Youth has allegedly committed a felony hate crime;
   c. Youth has allegedly committed a felony for the benefit of a street gang. (§ 707(d)(3).)[2]

II. Cases that may be filed in criminal court after the case has gone through the fitness process in juvenile court[3]

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[1] All references refer to the Welfare and Institutions Code unless otherwise noted.
[2] But if the judge does not believe, with reasonable cause, that the youth comes within § 707(d), the case must be transferred back to juvenile court.
[3] If the case could have been brought in criminal court but was filed in juvenile court, the judge must commit the youth to a secure juvenile facility.

A. Youth committed any offense and was 16 or older when it was committed. Prosecutor has the burden of showing that the youth does not belong in juvenile court. (§ 707(a)(1).) Look at:

1. Criminal sophistication;
2. Time to rehabilitate before expiration of juvenile court jurisdiction;
3. Previous history of delinquency;
4. Success of previous attempts to rehabilitate the youth; and
5. Gravity of offense and circumstances.

B. If youth is 16 or older at the time of the felony and had been declared a ward of the court, there is a presumption that the youth is unfit if he or she has committed two previous felonies *and* the offenses were committed when the youth was older than 14. Presumption is only overcome by showing fitness on each of the five criteria listed in section 707(a). (§ 707(a)(2).)

C. If youth is 14 or older[4] and has allegedly committed a 707(b) offense, the youth is presumed unfit.[5] Youth has the opportunity to show that he or she is fit for juvenile court by means of the above criteria.[6] (§ 707(c).)

III. Reverse/remand provisions (Pen. Code, §§ 1170.1, 1170.19)

A. Case remains in criminal court when:

1. Youth was found unfit after a fitness hearing and was convicted in criminal court of a criminal offense; or
2. The case was filed in criminal court according to either section 602(b) or 707(d), and youth is convicted of any eligible offense th the case could have been commenced on in criminal court.

B. Case could be remanded if:

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[4] Ambiguity: On its face, § 707(b) states that the minimum age for transfer eligibility is 16. Howeve 707(c) sets the minimum age for judicial transfer at age 14. The judicial officer may want to req points and authorities from the prosecution and defense if this issue arises.

[5] A youth who is 14 or older and is in custody for committing a felony is not released until both the yout and the guardian sign a promise to appear.

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1. The case was filed in criminal court pursuant to section 602(b) or 707(d) and the youth is convicted of an offense not listed in either section 602(b) or 707(d), where the youth would have been presumed unfit for juvenile court had the case been commenced in juvenile court. The youth has the option of moving for a post-conviction hearing, which may be held in either criminal court or juvenile court. At that hearing the youth is presumed unfit. (Pen. Code, § 1170.17(b)(2).)
    a. If the youth is found fit, case is remanded to juvenile court for disposition unless the youth requests adult sentencing, and all parties and the court agree. (Pen. Code, § 1170.19(b)(4).)
    b. If the youth is found unfit, case remains in criminal court unless all parties and the court agree to juvenile disposition. (Pen. Code, §1170.19(a)(4).)
2. The case was filed in criminal court under section 602(b) or 707(d), but youth is convicted of an offense not listed in either section, and had the case commenced in juvenile court, youth would have been presumed fit. District attorney may move for postconviction fitness hearing held in criminal court or juvenile court. The youth is presumed fit. Sentencing depends on finding in fitness hearing. (Pen. Code, § 1170.17(c).)
3. The case was filed in criminal court according to section 602(b) or 707(d), but the youth has not been convicted of any offense that, in combination with the youth's age at the time, would have rendered the youth eligible for transfer to criminal court. The case is remanded unless youth requests adult sentencing and all parties and the court agree. (Pen. Code, §§ 1170.17(d), 1170.19(b)(4).)

IV. Confidentiality of juvenile court proceedings- amendments to section 676

A. Judge may now admit to any proceeding those persons deemed to have a direct and legitimate interest in the case. (§ 676(a).)

B. Unless there is good cause found by the court, the name of a youth associated with one of the felonies listed in section 676(a) is not confidential. (§ 676(c).)

C. A list of juvenile hearings that are open to the general public must be posted daily in an easily accessible place. (§ 676(g).)

D. Use of firearm in the commission of specified felonies is added to the list of the 28 offenses for which court hearings are open to the public.

V. Changes and additions to laws regarding criminal street gangs

A. Criminal street gang additions

1. In order to prove active participation in a street gang, the prosecution does not need to prove that the person devotes all of his or her time to the gang or is a member of the gang; a showing of active participation is sufficient. (Pen. Code, § 186.22(i)(a).)

2. "Pattern of criminal gang activity" includes conspiracy to commit the following offenses: grand theft of property greater than $400, grand theft of property from another, grand theft of a firearm, terrorist threats, grand theft of a vehicle. (Pen. Code, § 186.22(e).)

B. Criminal street gang enhancements

1. If the felony was committed in association with a street gang, with the specific intent to further criminal conduct by gang members, there is an enhancement of 2, 3, or 4 years. (Pen. Code, § 186.22 (b)(1).)

2. But if the felony is *serious,* as newly defined by Penal Code section 1192.7, then there is an additional term of 5 years. (*Note*: False imprisonment is no longer included.) (Pen. Code, § 186.22(b)(1).)

3. If the felony is a *violent felony*, as newly defined by Penal Code section 667.5, the enhancement is 10 years. (Pen. Code, § 186.22 (b)(1).)

4. Committing a felony near a school is an aggravating circumstance only. (Pen. Code, § 186.22(b)(2).)

5. A judge may strike these enhancements only when the interests of justice are best served. (Pen. Code, § 186.22(g).)

C. Specified gang-related felonies and the new sentencing requirements

1. Home invasion robbery, carjacking, shooting into a vehicle or building, drive-by shooting resulting in injury or death, extortion, and intimidation of witnesses or victims are the six new life-term offenses where the minimum term is calculated as the greater of:

   a. The term determined by the court, including enhancement (Pen. Code, § 186.22(b)(4)(A));

   b. 15 years in state prison if the felony is home invasion robbery, carjacking, a felony violation of section 246, or a violation of Penal Code section 12022.5 (Pen. Code, § 186.22(b)(4)(B)); or

   c. 7 years in state prison if felony is extortion or threats to victims and witnesses (Pen. Code, § 186.22(b)(4)(c)).

2. Where there is first-degree murder accompanied by gang participation and killing to further the goals of the gang (now considered a special circumstance) the penalty is either death or life imprisonment without parole. (This provision does not allow the death penalty for juveniles.) (Pen. Code, § 190.2(a)(22).)

3. A minimum of 15 years must be served unless the sentence is less. (Pen. Code, § 186.22(b)(5).)

D. Wobbler offenses committed by gang members

1. A wobbler offense that is committed in association with a criminal street gang, with the specific intent to further criminal conduct by gang members, is punishable by 1 year in county jail or 1, 2, or 3 years in state prison. If only a misdemeanor is imposed, at least 180 days of the sentence *must be served*. (Pen. Code, § 186.22(d).)

2. Only when the interests of justice will be served may the minimum sentence be waived. (Pen. Code, § 186.26(g).)

E. Coercing others to participate in a gang

1. Any person who solicits or recruits another to participate actively in a street gang shall be punished with 16 months or 2 or 3 years in state prison. (Pen. Code, § 186.26(a).)
2. If a person verbally or physically threatens another to join a gang on two or more occasions within a 30-day period, the punishment increases to 3, 4, or 5 years in state prison. (Pen. Code, § 186.26(c).)
3. Threats to keep members in the gang are also punishable. (Pen. Code, § 186.26(c).)
4. If the person solicited is a youth, there is an enhancement of 3 years. (Pen. Code, § 186.26(d).)

F. Registration requirement for convicted gang members

1. The person must register within 10 days of release if convicted of participating in a street gang, committing a felony in association with a street gang, or committing any other gang-related felony. (Pen. Code, § 186.30(b).) The court must inform the person of his or her duty to register. The requirement terminates after 5 years. (Pen. Code, § 186.31.)
2. To fulfill registration requirements, the person must (1) appear at the law enforcement agency, with a guardian if the person is a youth; (2) sign a written statement including any required information; (3) provide fingerprints and a current photo. (Pen. Code, § 186.32(a)(1)(A–D).)
3. Failure to register is a misdemeanor. If another conviction for an offense specified in Penal Code section 186.30 is paired with a failure to register, there is an enhancement of 16 months or 2 or 3 years. (Pen. Code, § 186.33(b)(1).)

G. Conspiracy as a member of a street gang

Even without a criminal felony, active participation in a criminal street gang, knowing the members engage or have engaged in

criminal activity, *and* willfully promoting, furthering, assisting, or benefiting from felonious conduct of the gang is criminal conspiracy and is punishable under Penal Code section 182(a). (Pen. Code, §182.5.)

VI. Vandalism

A. Where the damage is greater than $400, vandalism is punishable by imprisonment in state prison or in county jail for not more than 1 year or a fine not in excess of $10,000, or a fine of $50,000 if the damage exceeds $10,000. (Pen. Code, § 594(b)(1).)

B. If the damage is less than $400, vandalism is punishable by a jail sentence for not more than 1 year in county jail or a fine. (Pen. Code, § 594(b)(4)(A).)

VII. Wiretapping

Wiretapping is allowable if the judge determines that there was a felony violation under Penal Code section 186.22 involving gang activity. (Pen. Code, § 629.52.)

VIII. Three Strikes

The crimes qualifying as "strikes" have been expanded to include all the crimes added to the statutes since June 1993, including the lists reformulated in Proposition 21. Any felony committed on or after March 8, 2000, is a felony strike if it is included in these updated statutes.

IX. Informal Probation

A. Informal probation is available to all youths for misdemeanors and to youths under the age of 14 for felony offenses. (§§ 654.2, 654.3(h).)

B. Unless the interest of justice would be served, informal probation is not available in these situations: 707(b) offense, allegation of possession or sale of controlled substance, allegation of drug possession on school campus, assault with a deadly weapon on school employee, possession of firearm in school zone, possession of other weapon in school zone, allegation of participation in street gang, already participated in this program, previously declared a ward of the court, restitution resulting from

offense exceeds $1,000, or the youth allegedly committed a felony offense when he or she was 14 or older. (§ 654.3(a–h).)

X. Probation violation

A. Probation officer or prosecutor files a notice of hearing when there is an alleged violation of a parole condition. (§ 777.)

1. If the youth is a section 601 ward, the probation officer files notice that includes a statement of facts supporting the conclusion that the court order was violated. (§ 777(a)(1).)
2. If the youth is a section 602 ward, but the violated condition is not a crime, probation officer files a notice including a statement of facts to support the conclusion. (§ 777(a)(2).) Before jeopardy attaches, prosecuting attorney may make a motion to dismiss the notice and request that the matter be referred to the probation officer for action. (§ 777(a)(3).)

B. Clerk sets a hearing within 30 days. If the court orders the youth detained, the hearing must be in 15 judicial days. (§§ 636, 777(d).)

C. The probation officer serves notice of the hearing on the youth, the guardian/parent, the youth's attorney, and the district attorney. (§ 777(b).)

D. At the hearing there is a preponderance-of-evidence standard to change, modify, or set aside a previous order.[7] (§ 777(c).)

E. Court may consider and admit reliable hearsay evidence at the hearing. (§777(c).)

XI. Deferred entry of judgment (§ 790 et seq.)

A. Deferred entry of judgment is available to youths 14 or older who are first-time felons and *all of the following apply:*

1. The youth has not been previously declared a 602 ward of the court;
2. The violation is not a 707(b) offense;

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[7] According to *In re Arthur* (1976)16 Cal.3d 226, defense may argue that the standard ought to be proof beyond a reasonable doubt. Request points and authorities.

3. The youth has not been previously committed to California Youth Authority;
4. Youth has never had probation revoked (§ 790(a));
5. Youth was at least 14 or older at the time of hearing; and
6. Youth must be eligible for probation under Penal Code section 1203.06.

B. Prosecuting attorney must notify defendant about eligibility of deferred entry. (§ 790(b).) The notification includes:
1. A description of deferred entry procedures;
2. Explanations about probation;
3. A clear statement that the youth must admit allegations and that upon successful completion of the probation, charges will be dismissed, records will be sealed, and charges in the wardship petition will be dismissed;
4. An explanation that the consequences of failure to complete the given deferred entry of judgment make the youth a 602 ward of the court;
5. An explanation of how records are retained; and
6. An explanation that failure to comply with terms may serve as the basis for a finding of unfitness if the youth commits two subsequent felonies. (§ 791.)

C. Notice of hearing must be personally served on the guardian at least 24 hours before hearing. (§ 792.)

D. Deferred entry of judgment cannot be established for less than 12 months or greater than 3 years. During that time, the youth is subject to warrantless searches, possible random drug testing, curfew, school attendance requirements, and any other appropriate sanction that the court imposes. (§ 794.)

E. Even if all procedures are completed, the court can either grant the probation or refer the case to the probation department for further

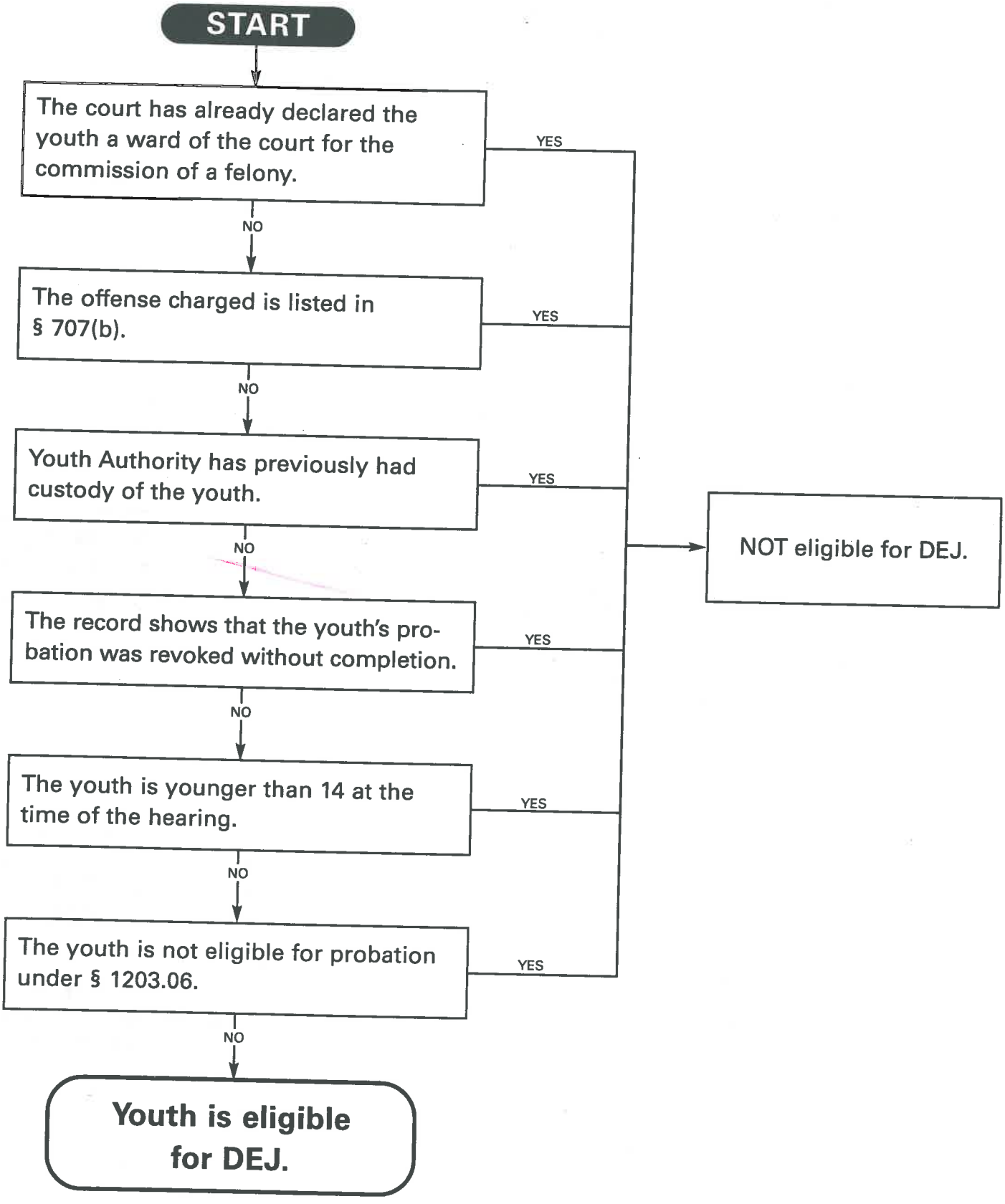
investigation and determination about education, treatment, and rehabilitation. (§ 792(b).)

F. Violation of Deferred Entry of Judgment

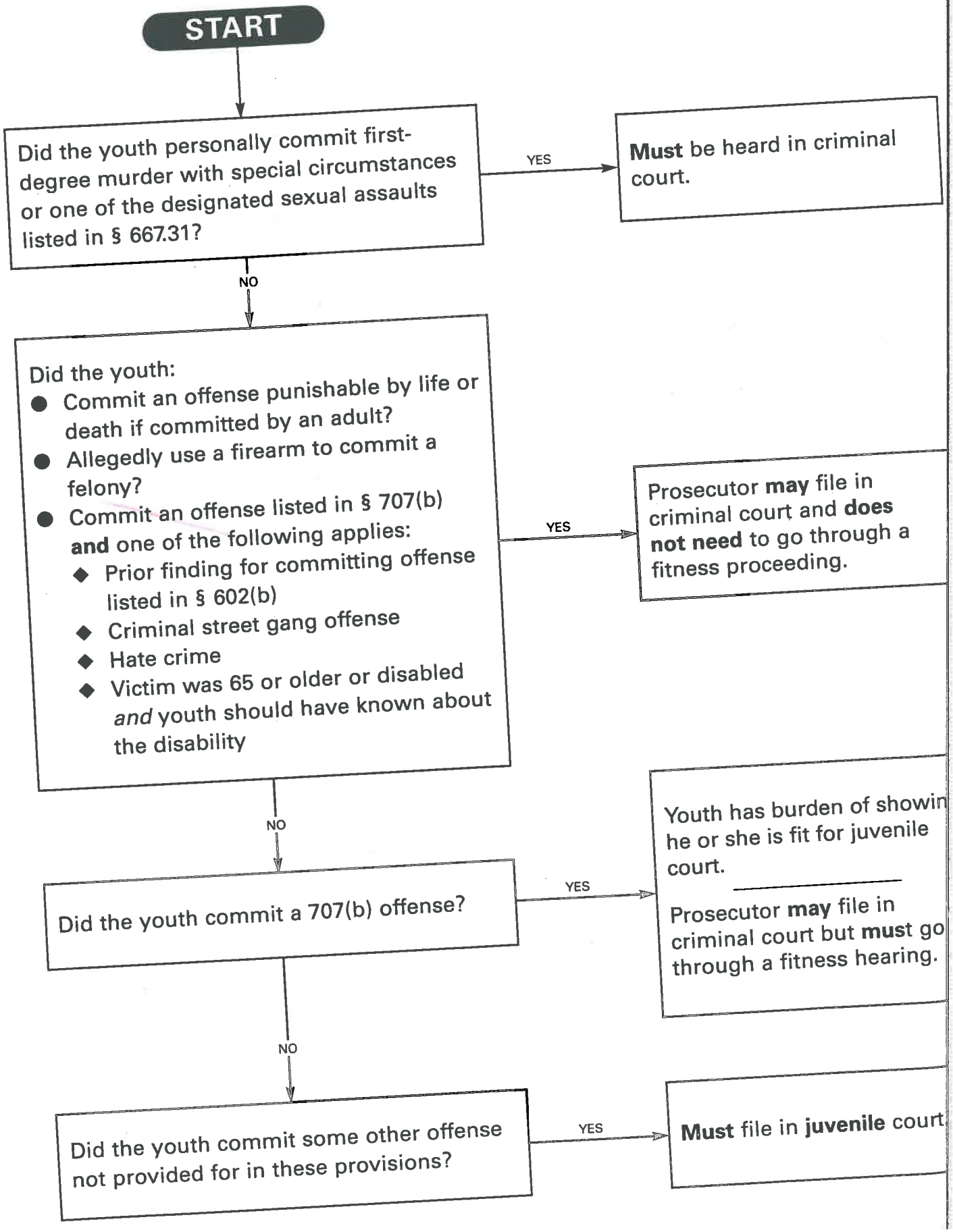
1. If it appears that the youth is not performing satisfactorily, court will lift the deferred entry of judgment and schedule a dispositional hearing. (§ 793(a).)

2. A complete criminal history is submitted to the Department of Justice if the deferred judgment is imposed. (§ 793(c).)

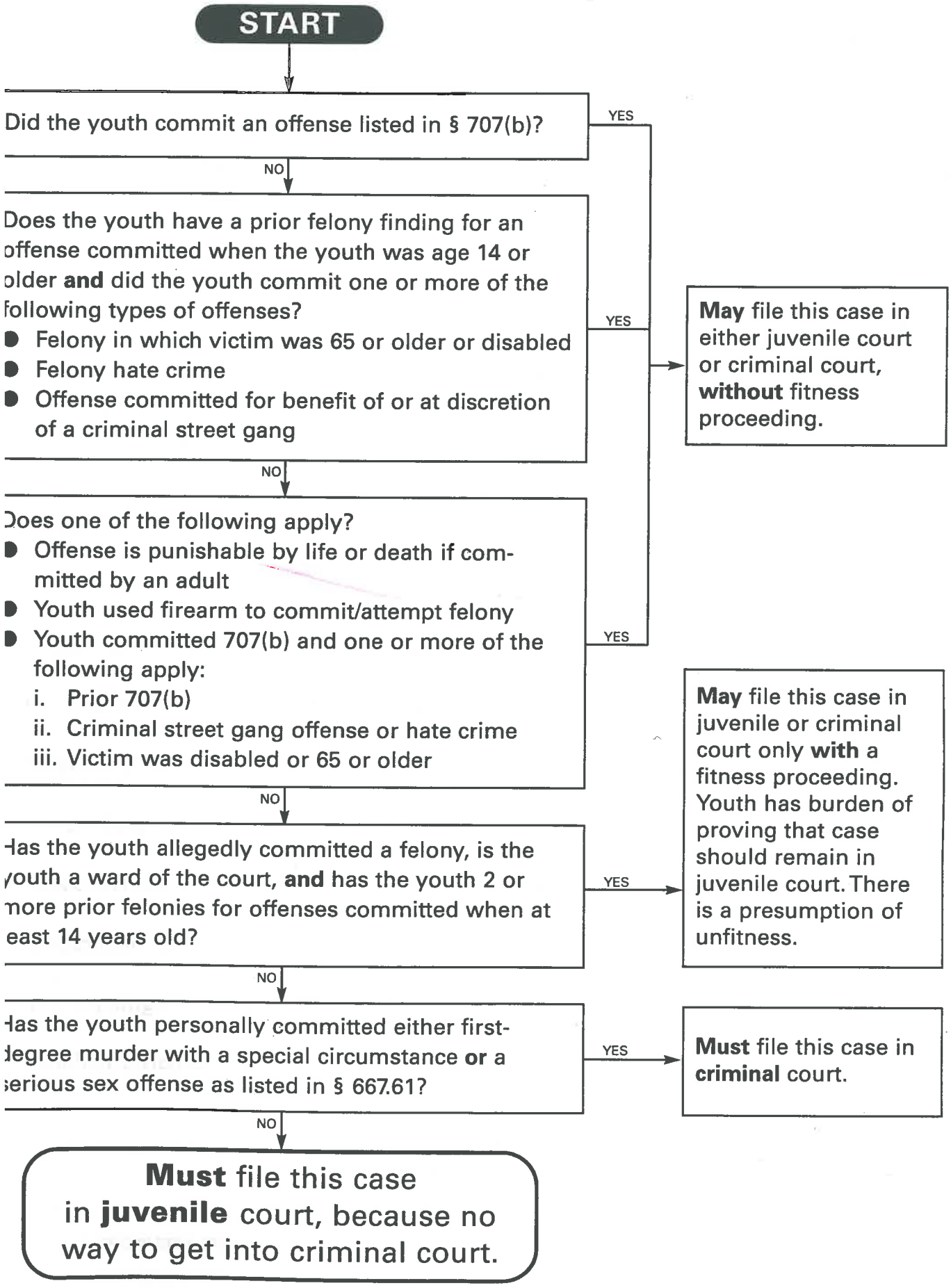
Is the youth eligible for deferred entry judgment



Youth 14 and older: Where should the case be heard?



Youth 16 and older: Where should the case be heard?



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Program #81

Juvenile Justice: What Does Prop. 21 Really Mean?

Friday, September 15, 2000

2:15p.m. - 4:15p.m.

Sponsored by: CRIM - Criminal Law Section

State Bar of California

ANNUAL MEETING 2000

SAN DIEGO
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A HITCH-HIKERS GUIDE TO THE POST-PROPOSITION 21 UNIVERSE

Lisa Greer*/
May, 2000

On March 7, 2000, California voters approved the "Gang Violence and Juvenile Crime Prevention Act of 1998," commonly referred to as the "Wilson Juvenile Justice Initiative" (the "Initiative"), or Proposition No. 21. This measure embodies a package of major "reforms"--or "deforms" depending upon your point of view--that dramatically alter the state's juvenile justice system, and by both direct and indirect, ripple effect, the state's adult criminal justice system as well. The Initiative adds many new provisions, and amends literally dozens of existing provisions, located within the Penal and Welfare and Institutions Codes. This article provides an overview of how Proposition 21 changes the manner in which juveniles are prosecuted in both juvenile and adult court, and the sentencing options available for juveniles convicted in adult court.

I. The Prosecution of Minors as Adults:

A. An Overview of California's Pre-Proposition 21 Transfer Laws:

Juvenile court jurisdiction is strictly a creation of state statutory law, as there is no constitutional right to juvenile court treatment. (In re Gault (1967) 387 U.S. 1). Accordingly, state legislatures are free to define the jurisdiction of the juvenile court as expansively or narrowly as they deem fit, so long as the system incorporates fundamental guarantees of due process and equal protection. California's juvenile court was created in 1913. Since the inception of the California juvenile court, there has been a mechanism for transferring the most serious, violent offenders into the adult criminal justice system, in order to subject them to full-scope, adult prosecution.

The laws governing the transfer of minors to adult court for full-scale prosecution under the general criminal law are known interchangeably as "fitness," "waiver," or "transfer" laws. In California, until January 1st of this year, the decision-making authority over the transfer process rested exclusively with the juvenile court judge. California transfer proceedings were governed by the multiple, complex provisions of Welfare and Institutions Code section 707, subdivisions (a)-(e), Welfare and Institutions Code section 707.01, the California Rules of Court, Rules 1480, et. seq., and some two and a half decades of appellate case law on the subject.

 Note: Remaining footnotes appear at the end of this article.

The district attorney initiated the process by filing a delinquency petition coupled with a motion for waiver to adult court against an eligible minor. The minor was then entitled to a hearing before a juvenile court bench officer, in which the court determined the minor's amenability, or "fitness," for juvenile court jurisdiction. This determination was based upon five legal criteria enumerated in Welfare and Institutions Code section 707: (1) The degree of criminal sophistication exhibited by the minor; (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; (3) The minor's previous delinquent history; (4) Success of previous attempts by the juvenile court to rehabilitate the minor; and, (5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor. The latest California Supreme Court case to have interpreted the meaning of these five criteria, with particular emphasis on the two most irksome criteria--numbers one and five--can be found at People v. Superior Court (Jones) (1998) 19 Cal.4th 667.[1]/

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[1]/ In People v. Superior Court (Jones) (1998) 18 Cal. 4th 667; Supreme Court of California, two 15-year-old male cousins, both without criminal records or arrests and both earning decent school grades, decided to rob a local convenience store for money to pay for their attending the prom. Prior to the robbery they acquired a gun, masks, and gloves; they also drank large quantities of alcohol and smoked marijuana. The gun they borrowed was cocked. They attempted to un-cock it but did not know how to work the weapon so they were unable to do so. Before entering the store they waited outside without their masks and were seen by five neighbors, two of whom identified the cousins. Immediately upon entering the store one of the cousins pulled out the gun, and it fired at the proprietor at close range, killing him. They then grabbed money from the cash register, but dropped all but $20 as they ran home. They also left a trail of the masks, gloves, gun, and vomit that led to one of their homes. When they got there, they realized that they had lost the apartment key as well. They were apprehended in front of the apartment shortly thereafter by pursuing police officers. The district attorney charged the children with murder and filed a Welfare and Institutions Code section 707, subdivision (e) petition. The juvenile court applied the fitness criteria per Welfare and Institutions Code 707(e), and found the two children to be fit and proper subjects for treatment in the juvenile court. The People sought a writ of mandate. The Court of Appeal reversed, finding that the juvenile court had abused its discretion in-finding the cousins to be fit for juvenile court under two of the five criteria - specifically the first criterion, the degree of criminal sophistication, and the fifth criterion, the circumstances and gravity of the alleged offense. The cousins appealed, contending that the People can only challenge the juvenile court ruling when the court acts in "excess of jurisdiction."

The Supreme Court addressed three issues in its opinion. First, the court found as a threshold matter that the People were entitled to appellate review by extraordinary writ. The court rejected the children's contention that the People can only challenge the juvenile court ruling when the court acted in "excess of jurisdiction." The children had relied on People v. Superior Court (James B.) (1981) 122 Cal.App.3d 263, a Court of Appeal case which cited the criminal law case People v. Superior Court (Stanley) (1979) 24 Cal.3d 622. In James B. the Court of Appeal had held that the People cannot file a writ of mandate to correct "ordinary judicial error." The Supreme Court held that Stanley does not disallow mandate review of error by a juvenile judge in a fitness proceeding. The court noted that "Although error - whether 'ordinary' or 'egregious' - does not itself constitute action in 'excess of jurisdiction' (citation omitted), it may result in a fitness order that incorrectly vests the juvenile court with jurisdiction, to the detriment of the best interest of

The burden of demonstrating amenability, or the lack thereof, for juvenile court jurisdiction under the five criteria was assigned to the prosecution or the minor, depending upon the minor's age, and the nature of the charges underlying the pending delinquency petition. There were two broad classes of minors: (1) those of ages fourteen and fifteen; and, (2) those of ages sixteen and seventeen.

The pre-Proposition 21 version of Welfare and Institutions Code sections 707, subdivisions (a)-(c) governed transfer proceedings for youth ages sixteen and seventeen. Under former Welfare and Institutions Code section 707, subdivision (a), minors sixteen years of age or older were eligible for transfer to adult court for prosecution on any offense, whether it be misdemeanor or felony, and no matter how trivial. However, such a minor was presumed amenable for juvenile court jurisdiction, and the burden of proof to demonstrate *non*-amenability rested with the prosecution. Under former Welfare and Institutions Code section 707, subdivision (c), minors sixteen years of age or older were presumed unamenable for juvenile court jurisdiction, if the pending delinquency petition alleged, and the prosecution was able to demonstrate a *prima facie* case of one or more of the twenty-nine (29) serious or violent offenses enumerated in the former version of former Welfare and Institutions Code section 707, subdivision (b). In such cases, it was the minor's burden to rebut the presumption that he or she was unamenable to juvenile court jurisdiction with respect to each and every one of the five criteria. Failure to do so resulted in a finding of "unfitness" for juvenile court jurisdiction, and an order for the minor's transfer to the adult criminal court.

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the child, of the juvenile justice system, and of society." The court further found that writ review is consistent with the legislative intent of Welfare and Institutions Code 707(e) that the juvenile court recite the reason why a child is fit under each criterion. The Supreme Court also found that the applicable standard of review is the "abuse of discretion" standard. The court found that the appropriate inquiry is whether there is any substantial evidence to sustain the determination that the child is fit on each criterion. As such, a finding unsupported by substantial evidence is "necessarily an abuse of discretion." Third, the court noted that a child charged with a Welfare and Institutions Code 707(e) offense cannot be found to be a fit and proper subject of the juvenile court if the child is found unfit on a single criterion.

Finally, the Supreme Court applied the abuse of discretion standard to the facts of the case. The court upheld the Court of Appeal finding that the juvenile court had abused its discretion in finding that criteria (A), degree of criminal sophistication, and (E), the circumstances and gravity of the offense, had established that the children were fit and proper subjects of the juvenile court. On the first criterion, degree of sophistication, the court found that criminal sophistication was evidenced by the planning - obtaining of masks, gloves, and a gun and selection of a neighborhood store because they could "get away with it." The court found that the children's ineptness in executing the crime did not mitigate the sophistication of their crime. On the fifth criterion, the circumstances and gravity of the offense, the court found that there were no mitigating circumstances that would outweigh the serious nature of the charge of murder. The court expressly rejected the fact that the children were intoxicated because the intoxication was used at least in part to fortify the children for the robbery.

As a result of the passage of AB 560 in the 1994 legislative session, for the first time in California's history, minors ages fourteen and fifteen became eligible for transfer to adult court, effective January 1, 1995. Under the pre-Proposition 21 version of Welfare and Institutions Code section 707, subdivision (d)(1), minors age fourteen or fifteen were eligible for transfer to the adult criminal court, if they were charged in a delinquency petition with one of twenty-four (24) serious or violent crimes enumerated in the pre-Proposition 21 version of Welfare and Institutions Code section 707, subdivision (d)(2). Such minors were presumed "fit," or amenable for juvenile court jurisdiction, and the burden of proof rested with the prosecution to demonstrate otherwise, under the five aforementioned legal criteria. Under former Welfare and Institutions Code section 707, subdivision (e), however, a minor age fourteen or fifteen who was charged with any one of the three forms of murder defined in former Welfare and Institutions Code section 707, subdivision (e)(1)-(3), was presumed "unfit," or unamenable for juvenile court jurisdiction. Just like a sixteen or seventeen year old subject to transfer under former Welfare and Institutions Code section 707, subdivision (c), a fourteen or fifteen year old charged with one of these three specified forms of murder was subject to adult court transfer, unless he or she was able to rebut the presumption of unamenability by a preponderance of the evidence, and with respect to each and every one of the five legal criteria listed above.

The operation of the legal presumption in favor or disfavor of a minor's amenability for juvenile court jurisdiction proved enormously determinative of the outcome in transfer proceedings. However, local community tolerances and sensibilities also played a role. So, for example, the rate of judicial transfer in many Bay Area counties was considerably less that those experienced in most Southern California jurisdictions. According to hand tabulated data maintained by the Juvenile Division of the Los Angeles District Attorney's Office, in Los Angeles County, the waiver rate over the last decade hovered at or near 80%, for those minors presumed "unfit" for juvenile court treatment. In other words, in Los Angeles, if a minor found him or herself in the unfortunate predicament of being presumed unfit for juvenile court jurisdiction, he or she stood a roughly 80% chance of being declared "unfit," and transferred to the adult criminal court. In Riverside County, that figure was historically closer to 95%.

Courtesy of SB 334, which was enacted by the Legislature, effective January 1, 2000, California, for the first time in its history, provided for the automatic transfer of minors to adult criminal court for full-scope prosecution under the state's general penal laws, without benefit of a judicial waiver hearing. SB 334 added Welfare and Institutions Code section 602, subdivision (b), which in turn mandated that a minor, age 16 or older, who has previously been adjudged a ward of the juvenile court based upon any felony committed when 14 years of age or older, and who is currently charged with one or more of the highly serious, violent offenses listed in Welfare and Institutions Code section 602, subdivision (b), must be prosecuted in a court of general criminal jurisdiction. Those offenses were as

follows: (1) murder in the first degree, as described in sections 187 and 189 of the Penal Code, if the prosecutor alleges that the minor personally killed the victim; (2) attempted, willful, deliberate and premeditated murder, if the prosecutor alleges that the minor personally attempted to kill the victim; (3) certain enumerated, forcible sex offenses, where the prosecutor alleges that the minor personally committed any of these offenses and that one of the circumstances enumerated in subdivision (d) or (e) of section 667.61 of the Penal Code exists; (4) aggravated forms of kidnaping, for which the penalty is life in prison, and in which the perpetrator personally and intentionally exposed the victim to a substantial likelihood of death or great bodily injury; and, (5) any felony enumerated in Penal Code section 12022.53, subdivision (a), in which the minor personally uses and discharges a firearm, within the meaning of either subdivision (c) or (d) of Penal Code section 12022.53. SB 334 is, in effect, a watered-down version of the Wilson Initiative, and was enacted by the Legislature in 1999 to blunt any potential political fall-out from the anticipated passage of Proposition 21. All of SB 334's direct file provisions appear to have been supplanted and chaptered out of existence by passage of Proposition 21.

B. The Initiative's Three-Tier Transfer Scheme:

1. Tier One: Automatic Waiver or Direct File:

The Initiative replaces California's current singular transfer process of judicial waiver with a three-tier scheme. The first tier is created in section 18 of the Initiative, by the addition of Welfare and Institutions Code section 602, subdivision (b)[2]/. Welfare and

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[2]/ Welf. & Inst. Code section 707, subdivision (b) enumerates the following crimes.

(1) Murder.
(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.
(3) Robbery.
(4) Rape with force or violence or threat of great bodily harm.
(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the PenalCode.
(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.
(9) Kidnapping for ransom.
(10) Kidnapping for purpose of robbery.
(11) Kidnapping with bodily harm.
(1) Attempted murder.
(13) Assault with a firearm or destructive device.
(14) Assault by any means of force likely to produce great bodily injury.
(15) Discharge of a firearm into an inhabited or occupied building.
(16) Any offense described in Section 1203.09 of the Penal Code.
(17) Any offense described in Section 12022.5 or 12022.53 of the Penal Code. [See footnote 3,

Institutions Code section 602(b) requires that a district attorney automatically file in adult criminal court on any minor, age 14 and older, who is charged with either murder with special circumstances, or certain enumerated sex offenses with specified circumstances, as defined in Penal Code section 667.61 (so-called "One Strike" sex offenses). This type of system is known as "automatic" transfer, due to the ostensibly non-discretionary means by which the proper filing venue is determined by legislative fiat. Calling such a system "automatic" transfer, however, obscures the enormously important role that a district attorney's filing discretion plays in the determination of whether the minor is tried as a juvenile or as an adult.

2. Tier Two: Prosecutorial Waiver

The second tier of transfer law is created in section 26 of the Initiative, which creates several different categories of cases in which the prosecutor may exercise discretion to file the case either as a juvenile delinquency petition, or file the matter as an adult felony complaint. This mode of transfer is often referred to as "prosecutorial waiver."

The first eligibility sub-category of prosecutorial waiver is created by the amendment of Welfare and Institutions Code section 707, subdivision (d)(1). Welfare and Institutions

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below]

(3) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

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

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

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

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

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

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

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

(26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

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

(28) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(29) The offense described in Section 12308 of the Penal Code.

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

Code section 707, subdivision (d)(1) allows prosecutors to file directly on minors, age 16 or older, in adult court, if the minor is charged with an offense enumerated in a newly expanded crime list found at Welfare and Institutions Code section 707, subdivision (b)[3]/. Specifically, the crime list enumerated in Welfare and Institutions Code section 707, subdivision (b), would add unarmed robbery to the definition of transfer-eligible robbery offenses, and would also add the crime of voluntary manslaughter.[1]/ Moreover, by referring[2]/ to crimes described in Penal Code section 12022.53 (the 10-20-life statute), the 707(b) list now includes the following: If all enumerated Penal Code 12022.53 offenses are now incorporated into Welfare and Institutions Code 707(b), then all of the following offenses are now Welfare and Institutions Code 707(b) crimes: (1) Mayhem as described by Penal Code section 203; (2) Simple kidnaping as described by Penal Code section 207; (3) Sodomy without force or violence; (4) Assault with intent to commit certain felonies (Pen. Code § 220); (5) Any rape (including espousal rape), but not unlawful sexual intercourse; (6) All lewd acts on children (force, violence, or threat no longer necessary); (7) Oral copulation (force, violence, or threat no longer necessary); and, (8) Penetration by foreign object (Pen. Code § 289).

A second eligibility sub-category of prosecutorial waiver cases is created by the addition of provision Welfare and Institutions Code section 707, subdivision (d)(2), which allows prosecutors to file directly in adult court on three distinct categories of minors, age 14 or older. The first such category consists of minors who are charged with an offense punishable by death or life imprisonment. The second such category consists of minors, age 14 or older, alleged to have committed any felony or attempted felony in which the minor is alleged to have personally used a firearm, within the meaning of Penal Code section 12022.5. The third such category consists of minors, age 14 or older, currently charged with a Welfare and Institutions Code section 707, subdivision (b) offense, where one or more of the following applies: (1) the minor has previously been adjudged a ward based upon a Welfare and Institutions Code section 707, subdivision (b) offense; (2) the pending offense was committed for the benefit of, at the direction of, or in association with a criminal street gang; (3) the current offense is a "hate" crime, motivated by the victim's race, color, ancestry, national origin, disability, gender, sexual orientation; or, (4) at the time of the offense, the minor knew the victim to be 65 years or older, blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair. With respect to minors who are eligible for prosecutorial waiver based upon a previous adjudication for a Welfare

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[3]/ Prior to the passage of Proposition 21, only armed robberies qualified as Welfare and Institutions Code section 707(b) offenses. Due to an ambiguity in the drafting of Welfare and Institutions Code 707(b)'s crime list, the California Supreme Court opined that for minors 16 and older, the "armed" requirement was met if the robbery involved either personal or vicarious arming of the minor. (In re Christopher R. (1993) 6 Cal.4th 86.) For minors age 14 to 15 years old, the "armed" requirement was met only if the robbery involved personal wielding of a weapon by the minor. (Former Welf. & Inst. Code § 707(d)(2).)

and Institutions Code 707(b) offense, there are a few key practice issues that are worthy of mention. First, like any case in which a prior serves to qualify the individual for harsher treatment, the prior may be subject to attack on Boykin-Tahl grounds. Second, the prior 602 wardship may be vulnerable to attack on incompetency of counsel grounds.

A third group of prosecutorial waiver cases is created by the addition of Welfare and Institutions Code 707, subdivision (d)(3). Welfare and Institutions Code section 707, subdivision (d)(3) permits district attorneys to file directly in adult court against minors, age 16 or older, where the minor has previously been adjudged a ward of the court for commission of *any* felony offense committed when he or she was age 14 or older, and where the current offense meets any of the following criteria: (1) a felony offense where the minor knew the victim to be elderly, or suffering from an enumerated disability; (2) a felony "hate" crime, per the meaning of Penal Code section 422.6; or (3) committed for the benefit of, at the direction of, or in association with any criminal street gang, per the meaning of Penal Code section 186.22.

3. Tier Three: Expanded Judicial Transfer:

The third tier of transfer law created by the Initiative is a tier of expanded judicial waiver, wherein the juvenile court judge retains decision-making authority over the issue of transfer, albeit subject to a stringent presumption of un-amenability, as described above. Welfare and Institutions Code section 707, subdivision (a)(2) is added, making eligible for transfer any minor, age 16 or older, subject to a presumption of "unfitness," if the minor is charged with any felony, and has previously been adjudicated a ward of the juvenile court on the basis of two or more felonies committed after age 14. This aspect of the Initiative is really a juvenile court analog to the state's "Three Strikes" law: two juvenile felony adjudications, and you're presumptively "unfit" for juvenile court. Moreover, the Initiative would amend current Welfare and Institutions Code section 707, subdivision (c), to lower from 16 to 14, the age at which a minor is presumed unfit for juvenile court jurisdiction, where the minor is charged with commission of an offense listed in Welfare and Institutions Code section 707, subdivision (b). Finally, Proposition 21 retains the ability of prosecutors to seek transfer of juveniles, age 16-17, subject to a presumption of the minor's amenability to juvenile court jurisdiction, for any alleged offense--felony or misdemeanor. In such cases--take for example a DUI case involving a minor arrested three days prior to his 18th birthday--the burden is on the prosecutor to demonstrate the minor's unamenability for juvenile court jurisdiction, based upon a balancing of the five amenability criteria set forth in Welfare and Institutions Code section 707.

Note that there is an inconsistency in the minimum age requirement set forth in Welfare and Institutions Code 707 (b), i.e. 16 years of age, as contrasted with the minimum age set forth in Welfare and Institutions Code 707(c) and Welfare and Institutions Code

707(d)(2)(C), i.e. 14 years of age. Both of these latter two provisions incorporate Welfare and Institutions Code 707(b) by reference, the result of which is a facial ambiguity as to what the correct minimum age for transfer really is under Welfare and Institutions Code 707(c) and Welfare and Institutions Code 707(d)(2)(C). Fundamental rules of statutory construction suggest that where such a facial ambiguity exists, it should be resolved in favor of the defendant. No doubt, this drafting ambiguity will have to be interpreted by the courts, against the backdrop of the Findings and Purpose Section of Proposition 21, as well as the contents of the voters' official informational pamphlets issued by the Secretary of State.

II. SB 334's Reverse Transfer Provisions in a Proposition 21 Context:

SB 334's reverse transfer provisions, located at Penal Code sections 1170.17 and 1170.19, were crafted, based upon the assumption that Proposition 21 would become law in early March, 2000, as indeed did come to pass. Accordingly, these statutes were deliberately drafted to render them, at least theoretically, "initiative-proof"--a status that will no doubt be tested on appeal in the state's appellate courts. SB 334's reverse remand provisions function to provide a corrective where a minor is either directly filed upon as an adult per newly added Welfare and Institutions Code section 602, subdivision (b), or "prosecutorially waived" under newly amended Welfare and Institutions Code section 707, subdivision (d), but is ultimately convicted of a less serious offense that would not trigger "automatic filing" or "prosecutorial waiver" eligibility. Under SB 334's reverse remand provisions, superior court judges presiding in adult criminal courts will have discretion, albeit limited, and highly structured discretion, to return some of these minors back to juvenile court, following conviction on the lesser offense.

There are four possible sentencing permutations covered by SB 334 reverse remand provisions. In permutation number one, described in newly created Penal Code section 1170.17, subdivision (a), a minor is directly filed upon in adult court for alleged commission of a serious, violent offense enumerated in Welfare and Institutions Code section 602, subdivision (b), and is ultimately convicted of that same charge. Such a minor would be subject to the same sentence that a similarly situated adult would receive for the identical crime, the sole exception being the death penalty, per Penal Code section190.5, and newly amended Penal Code section 190.2. For example, if a 14-year old minor is automatically filed upon in adult criminal court based upon the charge of having inflicted GBI in the course of personally committing forcible rape ((a) Welf. and Inst. Code § 602, subd. (b) direct file offense), and that minor is ultimately found guilty of that same charge, the minor would be eligible for the same sentence that an adult would receive for those same offenses.

The second permutation is described in newly created Penal Code section 1170.17, subdivision (b). Penal Code section 1170.17, subdivision (b) covers situations where a minor is directly filed upon, or prosecutorially waived into adult court, but is ultimately convicted

of a different charge that does not confer automatic filing or prosecutorial waiver authority, but is nonetheless an offense which gives rise to a rebuttable presumption of unfitness under Welfare and Institutions Code sections 707, subds. (a)(2), or (b)-(c). An example would be a 14-year old minor charged with having inflicted great bodily injury in the course of personally committing forcible rape (an enumerated Welf. and Inst. Code § 602, subd. (b) offense), who is ultimately convicted of forcible rape, and acquitted on the GBI enhancement. Rape without GBI is *not* an offense enumerated in Welfare and Institutions Code section 602, subdivision (b), and standing alone, does not confer prosecutorial waiver authority on the D.A. Rape is, however, an offense giving rise to a presumption of unfitness, per Welfare and Institutions Code section 707, subdivisions (b)-(c), for minors 14 and older. Therefore, a 14-year old minor acquitted on all Welfare and Institutions Code section 602, subdivision (b) charges, who does not meet the criteria for prosecutorial waiver under Welfare and Institutions Code 707, subdivision (d), but who is convicted of rape, would be subject to sentencing under the general penal law, unless he or she asserts and prevails upon a motion to return to juvenile court jurisdiction. If successful in the bringing of this motion, the minor's conviction would be converted into an order entering adjudication of wardship, and the minor would receive a juvenile court disposition, as authorized by the juvenile court law. In order to prevail on such a motion, the minor would have to demonstrate that he or she is amenable to the care, treatment and training programs available through the juvenile court, based on each and every one of the five amenability criteria set forth in Welfare and Institutions Code section 707.

The third possible sentencing outcome is described in newly created Penal Code section 1170.17, subdivision (c). Penal Code section 1170.17, subdivision (c) governs cases in which a minor is automatically transferred to, or prosecutorially waived into, adult court, but is ultimately convicted of a lesser, non-enumerated offense that renders the minor eligible for judicial transfer to adult court, albeit subject to a rebuttable presumption of amenability, per Welfare and Institutions Code section707, subd .(a)(1). An example would be a *16*-year old minor charged in his very first petition with having personally committed forcible rape, who is ultimately convicted of sexual battery, per Penal Code section 243.4. Sexual battery is neither an offense enumerated in Welfare and Institutions Code section 602, subdivision (b), nor an offense giving rise to a presumption of unamenability per Welfare and Institutions Code section 707, subdivisions (b)-(c). However, per Welfare and Institutions Code section 707, subdivision (a) a minor, age 16 or older, is subject to transfer with respect to *any* crime, felony or misdemeanor, albeit subject to a rebuttable presumption of amenability to juvenile court jurisdiction. Such a minor would be entitled to receive a juvenile court disposition, and have his or her conviction converted into a declaration of juvenile court wardship, unless the prosecution asserts and prevails upon a motion to have the minor declared unamenable for juvenile court jurisdiction, based upon a balancing of the five criteria set forth in Welfare and Institutions Code section 707. Given that the presumption of amenability operates in favor of the minor in such cases, defense counsel ought to experience significant success in getting

these 16 and 17 year old clients "reverse waived" back to the jurisdiction of the juvenile court.

The fourth and last sentencing outcome dealt with in SB 334 is described in newly added Penal Code section 1170.17, subdivision (d). Penal Code section 1170.17, subdivision (d) requires the automatic return to juvenile court of any minor who is directly transferred to, or prosecutorially waived into, adult court, but who is ultimately convicted of an offense that would not give rise to judicial transfer under any circumstances. This subdivision will only impact 14 and 15-year old minors. The reason for this is that Welfare and Institutions Code section 707, subdivision (a)'s non-presumptive transfer provisions for minors sixteen and older survive passage of Proposition 21, albeit renumbered as Welfare and Institutions Code section 707, subdivision (a)(1). Accordingly, a sixteen year old minor will always be categorically eligible for non-presumptive judicial transfer to adult criminal court, per Welfare and Institutions Code section 707, subdivision (a). This is not the case for 14 and 15 year olds. Newly created Penal Code section 1170.17, subdivision (d) will therefore operate solely to return fourteen and fifteen year old juveniles who are automatically waived to adult court pursuant to Welfare and Institutions Code 602, subdivision (b), or prosecutorially waived into adult court per Welfare and Institutions Code section 707, subdivision (d), who are ultimately convicted of a lesser offense that would not render the minor eligible for judicial waiver under any scenario. What offenses would that be? The answer: offenses that are not enumerated in Proposition 21's newly expanded version of Welfare and Institutions Code section 707, subdivision (b), which is described immediately below.

Where a minor is eligible for reverse remand, the adult criminal court may choose to either conduct the post-conviction fitness hearing itself, or remand the matter back tot he juvenile court, for purposes of conducting the post-conviction fitness hearing only. Given that fitness hearings are fairly involved, in terms of the breadth and complexity of psycho-social evidence that is presented on the five fitness criteria, it would not be surprising if most adult criminal courts exercise their option to remand the matter to the juvenile court for purposes of the hearing. The advantage or disadvantage of such a practice will vary from county to county, and indeed, from courthouse to courthouse.

Again, note that SB 334's reverse remand do not encompass minors whose adult court prosecutions arise out of a judicial finding of unfitness made pursuant to a Welfare and Institutions Code 707 waiver hearing. The case of People v. Self (1998) 63 Cal. App. 4th 58, a pre-Proposition 21 case, held that judicially waived minors do *not* have a right of return to juvenile court jurisdiction when they are acquitted of all predicate Welfare and Institutions Code 707(b) offenses, but are convicted of other, non-707(b) offenses---in the case of Self, a residential burglary (Pen. Code § 459), a Penal Code 1192.7(c) serious offense. However, the Self opinion was issued prior to the passage of SB 334's reverse remand provisions. Post

SB 334, there is, quite possibly, a valid equal protection argument to be made that judicially waived minors, whose adult prosecutions are predicated upon a finding of unfitness made pursuant to Welfare and Institutions Code 707(a) or 707(c), should have a right to reverse remand to the same extent as minors whose adult prosecutions arise from direct filing authority under Welfare and Institutions Code 707(d) or Welfare and Institutions Code 602(b).

III. Practice Issues and Motions in the Context Direct File Prosecutions:

The prerequisites that render a minor eligible for direct filing in the adult court system, under either Welfare and Institutions Code section 602(b) or 707(d) are multiple and complex. Defense counsel should take the position that unless these prerequisite eligibility elements or criteria are specifically pled and proven, or are specified within an admission of the charges, that the adult criminal court system lacks original subject matter jurisdiction over the minor. Failure by the prosecution to specifically plead and prove direct filing eligibility prerequisites can be raised by demurrer at the time of arraignment on the complaint or information, at the preliminary hearing, or on a motion seeking a post-conviction fitness hearing brought pursuant to Penal Code section 1170.17 and 1170.19. It is worth noting that many of the direct file eligibility categories are defined in part by the minor's age at the time of the alleged offense (as versus age at the time of arraignment or conviction). For some minors of alien origin, age may be extremely difficult to prove, due to inconsistent or nonexistent records keeping in the country of origin.

Proposition 21 contains express language, found at newly enacted Welfare and Institutions Code section 707(d)(4), to the effect that failure by the prosecution to prove direct file eligibility prerequisites under Welfare and Institutions Code section 707 at the preliminary hearing should result in the magistrate remanding the matter back to the jurisdiction of the juvenile court.[4]/ If the preliminary hearing magistrate refuses to remand a case back to juvenile court where the prosecution has failed to prove that the minor meets direct file eligibility criteria, defense counsel would be well advised to consider bringing a motion pursuant to Penal Code section 995, and in the event that this motion is unsuccessful, to seek appellate writ review.

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[4]/ Prior to the passage of Proposition 21, only armed robberies qualified as Welfare and Institutions Code section 707(b) offenses. Due to an ambiguity in the drafting of Welfare and Institutions Code 707(b)'s crime list, the California Supreme Court opined that for minors 16 and older, the "armed" requirement was met if the robbery involved either personal or vicarious arming of the minor. (In re Christopher R. (1993) 6 Cal.4th 86.) For minors age 14 to 15 years old, the "armed" requirement was met only if the robbery involved personal wielding of a weapon by the minor. (Former Welf. & Inst. Code § 707(d)(2).)

A variety of *ex post facto* challenges will arise in the aftermath of Proposition 21's passage.[5]/ A reasonable defense position is that offenses which occurred prior to the Initiative's effective date of March 8, 2000 are not subject to direct file prosecution per Welfare and Institutions Code section 602(b) or Welfare and Institutions Code section 707(d). Instead, such cases must first undergo a traditional judicial transfer process, pursuant to the pre-Proposition 21 version of Welfare and Institutions Code 707.

Defense counsel may also wish to consider strategies based upon inviting the court to invoke its authority, under Penal Code section 1385, to strike direct file eligibility prerequisite allegation(s) in the interest of justice. A reasonable defense position would be that Penal Code section 1385 and the case of People v. Romero,[6]/ empower a court to strike direct file allegations and/or counts that render the minor eligible for direct filing in the adult criminal courts. If the court rules to strike direct file eligibility prerequisite allegation(s), then the minor may be eligible for reverse remand under Penal Code 1170.17 and Penal Code 1179.19.

IV. Adult Court Sentencing of Unfit Minors:

The Initiative also amends Welfare and Institutions Code section 1732.6, to further limit the ability of adult criminal court judges to commit transferred youths to the Youth Authority, in lieu of a state prison sentence. Per the former version of Welfare and Institutions Code section 1732.6, "unfit," judicially transferred minors may be committed to the Youth Authority only if the time necessary to complete their determinate sentence, when added to the minor's age at the time of sentencing, does not exceed the minor's twenty-fifth birthday. The Initiative maintains the aforementioned restriction on CYA eligibility criteria, but further precludes commitment to CYA for all minors convicted of any offense enumerated in the newly expanded crime list found in Welfare and Institutions Code section 707(b), committed when age 16 or older. Such minors are categorically ineligible for Youth Authority commitment, regardless of the duration of the assigned determinate sentence.

Note that newly amended Welfare and Institutions Code 707(d)(6) allows for YA commitment of youth prosecuted and convicted in adult court under Welfare and Institutions Code 707, subdivision (d)(1)-(3), subject to the overriding restrictions of newly amended Welfare and Institutions Code 1732.6.

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[5]/ It is unclear whether the reference to Penal Code section 12022.53 in subdivision (b)(17) imports all of the crimes identified in subdivision (a) of section 12022.53, or whether it incorporates also the requirement of use, discharge, or bodily injury which forms the crux of section 12022.53.

[6]/ People v. Romero (1996) 13 Cal.4th 497

Criminal defense practitioners will also encounter a class of minors who are eligible for prosecutorial direct filing under Welfare and Institutions Code section 707(d), whom the district attorney elects, for whatever reason, to prosecute as a juvenile. The Initiative profoundly constricts a juvenile court judge's discretion in the area of juvenile sentencing of such minors, which in juvenile justice parlance is referred to as case "disposition". If, for example, a minor is adjudicated a ward of the juvenile court for an offense that would have entitled the prosecution to directly file the matter in adult criminal court, then the juvenile court judge *must* impose a juvenile hall, boot-camp, or Youth Authority commitment Moreover, the juvenile court is similarly restricted to a secure disposition with respect to minors who have a record of two prior adjudicated felonies committed at age fourteen or older, and who are subsequently found "fit" for juvenile court retention on a petition based upon a felony allegedly committed at age sixteen or older. Disposition in such cases must consist of secure commitment in a camp, ranch, secure juvenile home, or the Youth Authority. However, Proposition 21 does not specify a minimum period of secure commitment in these mandatory disposition cases. Accordingly, that a de minimus period of time in the juvenile hall--as little as credit for one day time served--can satisfy the statutory requirement of a mandatory secure disposition.

V. Juvenile Detention Provisions and Promises to Appear:

Former Welfare and Institutions Code 625.3 required that a minor, age 14 years or older, who was taken into custody for the personal use of a firearm in the commission or attempted commission of a felony, could not be released by a probation officer until the minor had first been brought before a judicial officer. The Initiative adds subdivision (b) to Welfare and Institutions Code section 625.3, prohibiting the release of a minor by a probation officer, prior to an initial appearance before a juvenile court bench officer, if the minor is taken into custody for commission of any offense enumerated in Welfare and Institutions Code section 707(b). This expansion of Welfare and Institutions Code section 625.3 most likely tracks current detention practices statewide, but would eliminate any and all flexibility on the part of probation officers to depart from those practices under exceptional circumstances. Note that wobbler offenses such as Penal Code 245 are 707(b) offenses only if they are filed as a felony, rather than as a misdemeanor. (In re Sim J. (1996) 38 C.A. 4th 94). However, since most wobblers are over-filed as felonies in juvenile court, the Initiative's mandatory detention provision eliminates a probation officer's discretion to release a minor who is arrested and charged with a relatively benign form of assaultive conduct: for example, participation in a school yard brawl resulting in few or no injuries, for example. Note, also that this mandatory detention provision potentially conflicts with the holding of Alfredo A. v. Superior Court (1994) 6 Cal. 4th 1212, as modified at 7 Cal. 4th 447d, that a minor must receive a probable cause determination within 72 hours of being taken into custody, or presumably, be released.

The Initiative also creates new requirements for minors seeking release from temporary, pre-adjudication custody. Former Welfare and Institutions Code section 629 provided that as a condition of release from temporary custody, a probation officer could, but was not required to procure a written promise to appear before the probation officer, from the minor, or the minor's parent or guardian. The Initiative amends Welfare and Institutions Code section 629, to provide that for minors over the age of 14 who are taken into custody for the alleged commission of a felony or attempted felony, the minor may not be released unless and until the minor's parent or guardian signs a promise to appear before the probation officer. This provision may potentially cause some minors, who would otherwise be released pending adjudication, to remain detained, due to the unavailability or non-cooperation of their parent or guardian.

VI. Juvenile Arrest Warrants:

Former Welfare and Institutions Code section 663 authorizes the issuance of a warrant for a minor's arrest when, *inter alia*, the whereabouts of the minor were unknown, and *all* reasonable efforts to the minor had failed. The Initiative eliminates the requirement that any reasonable efforts be made to locate the minor, prior to issuance of the arrest warrant. This means that if a minor's whereabouts are temporarily unknown simply due to the family having moved, law enforcement can obtain an arrest warrant without having to check the accuracy of a forwarding address, or checking with the local school district to determine where the minor is enrolled.

VI. Juvenile Probation Violations:

One of the Initiative's potentially most far reaching changes to the juvenile court law occurs in the area of juvenile probation violations, which are governed by Welfare and Institutions Code section 777. Former Welfare and Institutions Code 777, subdivision (e) authorized a juvenile court to impose up to thirty days of juvenile hall time for violations of probation, without the necessity of a full-blown hearing, or in-depth evidentiary evaluation. However, Welfare and Institutions Code section 777, subdivision (a) required that in order for a juvenile court to violate a minor's probation, for purposes of imposing a more intrusive form of disposition other than thirty or fewer days of juvenile hall time, the prosecution was first required to demonstrate conduct, pled specifically in a noticed petition, that violated express conditions of probation. Moreover, the prosecution as further required to demonstrate that the previously imposed disposition had not been effective in the rehabilitation of the minor. These petitions were typically referred to as "supplemental" or Welfare and Institutions Code section 777, subdivision (a) petitions. These stringent standards for violating juvenile probation were bolstered by the holding of In re Arthur N. (1976) 16 Cal. 3d 226), requiring that the standard of proof at supplemental petition hearings was proof beyond a reasonable doubt. At Welfare and Institutions Code section 777,

subdivision (a) supplemental petition hearings, the minor was also entitled to be represented by counsel, to engage in discovery, to cross-examine witnesses, to present defense evidence. Moreover, California Rules of Court, Rule 1431, subdivision (d) subjected the former version of Welfare and Institutions Code 777, subdivision (a) hearings and notice requirements to the same time limitations as jurisdictional hearings brought pursuant to Welfare and Institutions Code section 602.

The Initiative eradicates the need for notice in the form of a supplemental petition. Simple notice would suffice. The Initiative also dilutes the standard of proof at Welfare and Institutions Code section 777 (a) hearings, from beyond a reasonable doubt, to a preponderance of the evidence. Perhaps most far-reaching is the Initiative's outright elimination of the requirement that in order to sustain a Welfare and Institutions Code 777, subdivision (a) petition, the court must conclude that the previous level of disposition has not been effective in the rehabilitation of the minor. Instead, all that is now required to violate a minor's juvenile probation, and to impose a harsher level of disposition, is proof, by a preponderance of the evidence, that the minor has violated one or more orders of the juvenile court, no matter how trivial or technical those violations may be.

Practitioners representing minors who are accused of violating their probation should consider raising a due process challenge under In re Arthur N., supra, if the court subjects the minor to a more intrusive disposition order based upon a finding that the minor is in violation of his or her probation, and the record reflects either of the following: (1) application of a standard of proof less than proof beyond a reasonable doubt; or (2) reliance on incompetent (e.g. frank hearsay without any legally cognizable indicia of reliability) evidence.

VII. Deferred Entry of Judgment:

A grant of juvenile diversion may occur pre-filing, in the discretion of the probation officer, per Welfare and Institutions Code 654, or may occur post-filing, in the discretion of the juvenile court, per Welfare and Institutions Code 654.2. Juvenile court diversion, per Welfare and Institutions Code sections 654 or 654.2, consists of six months of informal juvenile probation, successful completion of which results in final dismissal of the pending, unadjudicated delinquency petition. Eligibility for juvenile diversion is governed by Welfare and Institutions Code section 654.3. Welfare and Institutions Code section 654.3 sets forth a list of offenses or circumstances which render a minor categorically ineligible for juvenile diversion, absent a finding that an exception should be made in the interests of justice. Pre-Proposition 21, a minor was precluded from diversion eligibility if the pending petition alleged any of the following: an offense(s) in Welfare and Institutions Code section 707(b)-(e); sale or possession for sale of a controlled substance; possession of certain controlled

substances, including marijuana, on a school campus; and active participation in a criminal street gang per Penal Code section 186.22.

The Initiative substantially broadens the zone of diversion ineligibility, by categorically precluding diversion as an option for minors charged in a delinquency petition with commission of a felony offense at age 14 year or older. In substitution of diversion eligibility for this population, the Initiative adds Penal Code 790, et seq., which creates an elaborate, new "deferred entry of judgement" program. To be eligible for this new program, the minor must have no prior felony adjudication, no prior Youth Authority commitments or probation revocations, and the pending felony petition cannot allege an offense enumerated in Welfare and Institutions Code section 707, subdivision (b). Wobbler offenses charged as felonies bring a minor within the ambit of the DEJ scheme, and preclude traditional diversion eligibility, absent an exception made in the interest of justice. If a minor meets all of the eligibility prerequisites for DEJ, the minor may elect, subject to the approval of the court and prosecution, and subject to elaborate notice requirements, to admit the allegations set forth in the petition. The court may then either summarily grant DEJ status, or refer the matter to probation for an evaluation and recommendation regarding the minor's suitability for DEJ supervision. Where the court elects to refer the matter to probation for evaluation, it is crucial that any preceding admission of the charges be explicitly conditioned upon the court's future grant of DEJ, with an option to rescind the admission should the probation department issue an unfavorable report.

If the minor consents, and the court approves the minor's participation in a program of DEJ supervision, then the minor will undergo a program of formal probation supervision for a minimum period of twelve, to a maximum period of thirty-six months. The court is mandated to impose warrantless search and seizure as a condition of probation supervision. The juvenile court may also elect to impose random drug and alcohol testing, as well as conditions relating to curfew and school participation, among others. If in the opnion of the court, the prosecution, and probation, the minor satisfactorily completes the twelve to thirty-six month period of formal supervision, then the admitted petition is dismissed with finality. If, on the other hand, in the opinion of the prosecutor, the probation officer, or the court, the minor is not performing satisfactorily in the formal supervision program, is not benefitting from the deferred entry program, or is adjudged a delinquent ward for either one felony, or two or more misdemeanors during the term of supervision, the minor's deferred entry status must be revoked. Should this occur, then the case proceeds, without benefit of an adjudicatory hearing, directly to a declaration of formal wardship, and a disposition hearing.

It is important to underscore a few salient aspects of the Initiative's deferred entry scheme. The first is the laxity of revocation standards. Essentially, there are no objective measures for what constitutes failure within the program.

Second, read literally, the Propositions rests authority to confer and/or revoke deferred entry status equally with the juvenile court judge, the probation officer, and the district attorney. This aspect of the DEJ scheme raises serious separation of power issues, in light of the holding and reasoning of On Tai Ho (1974) 11 Cal.3d 59. In On Tai Ho, the defendant was charged with possession of marijuana, and was found both eligible and suitable by the probation department for a program of drug offender diversion that, at the time, was available for first time offenders under Penal Code sections 1000-1000.4. Although the court was in agreement with the Probation Department's recommendation of diversion, the D.A. refused to consent to a diversion program. Nonetheless, the court ordered diversion, and declared provision in Penal Code 1000.2, which required the district attorney's consent to diversion status as an unconstitutional violation of separation of powers doctrine.

Third, as previously noted, to obtain deferred entry status, the minor must the allegations in the petition. It is unclear from the language of the text whether this means that the minor must admit each and every charge alleged in the petition, or whether the minor can plea bargain away some of the charges.

Finally, it is unclear what the status of Welfare and Institutions Code 725(a) supervision is in the aftermath of Proposition 21. Welfare and Institutions Code section 725(a) authorizes a 6 month program of probation supervision, without formal declaration of wardship, as a possible disposition in a case. Unlike diversion, per Welfare and Institutions Code section 654 or 654.2, Welfare and Institutions Code 725(a) involves the juvenile court making a true finding regarding the underlying charge. Accordingly, it has always been considered the next best thing to Welfare and Institutions Code section 654 diversion, since the supervision time is brief, and the conditions of probation typically involve a minimal loss of liberty. Proposition 21 did not expressly repeal or modify Welfare and Institutions Code 725(a). However, by its own terms, Welfare and Institutions Code 725(a) is available only to those minors who could qualify for diversion per Welfare and Institutions Code 654.3. Although, at first glance, this cross-reference to Welfare and Institutions Code 654.3 would appear to sweep in all of the Proposition 21 restrictions on diversion eligibility, there is a good argument that it did not.

Welfare and Institutions Code 725(a) was last amended in 1989 to incorporate or adopt by reference section Welfare and Institutions Code 654.3. The effect of adoption by reference is the same as if the adopted statute had been set out at length in the adopting statute. But where the statute adopts by specific reference the provisions of another statute, such provisions are incorporated only in the form *in which they exist at the time of the reference*. Accordingly, repeal or subsequent additions to, or modifications of, the provisions referred to does not affect the adopting statute, absent a clearly expressed

intention to the contrary. (Palermo v. Stockton Theatres, Inc. (1948) 32 Cal.2d 53, 58-59; See People v. Superior Court (Lavi) (1993) 4 Cal.4th 1164, 1167, fn7.)

Recently enacted Proposition 21 amended section 654.3 by explicitly prohibiting pre-adjudication informal diversion for minors 14 or over, charged with a felony, unless unusual circumstances exist. Proposition 21 did not amend section 725(a) post-adjudication supervision. Therefore, under the holding of Palermo, section 654.3's limitation on diversion eligibility is incorporated in to section 725 only in its form as it existed in 1989.

It will be important to point out to the court the difference between Welfare and Institutions Code 654.3 and 725(a), in making the aforementioned argument. Section 654.3 is a pre-adjudication vehicle that allows for the dismissal of an action without any finding that the minor committed a crime. Section 725(a), in contrast, occurs only after a plea or adjudication, where the charges have been found true, and the minor is found to be a person described by section 602. The minor is then placed on probation for a period of 6 months. Termination of probation, as opposed to dismissal, occurs if the minor complies with the conditions of probation. If the minor fails to comply with the terms of probation, then he or she is deemed a ward of the court and can be sent home on probation, suitably placed, given a camp commitment, or sent to CYA.

Taken as a whole, deferred entry of judgement looks to be a risky venture for many kids in the system. It requires immaculate compliance with a program of supervision that is both more intrusive, and longer in duration than the average program of formal probation supervision likely to be imposed upon a first-time, non-violent offender. Moreover, the stakes have been raised enormously for accruing any felony adjudication where the offense was committed at age 14 or older. Newly added Welfare and Institutions Code 707(a)(2) creates a presumption of unfitness for any minor charged with a felony committed at age 16 or older, if that minor has previously sustained two felony adjudications for offenses committed at age 14 or older. The interaction between DEJ and Welfare and Institutions Code 707(a)(2) is potentially devastating for recidivist offenders. On the other hand, there may be cases where it will be in the minor's best interests to avail him or herself of DEJ. It may simply be the best of an array of bad options. This will have to be evaluated on a case-by-case basis, albeit with a healthy dose of skepticism concerning any minor's realistic prospects for successfully completing DEJ.

VIII. Confidentiality of Juvenile Court Records/Inter-Agency Records Sharing/Sealing:

Over the last two decades, laws have been enacted which have served to incrementally weaken the juvenile court's confidentiality protections--protections which were originally conceived and implemented as integral to the central, rehabilitative mission of the juvenile court. Thus, for example, even prior to the passage of Proposition 21,

Welfare and Institutions Code section 676 caused hearings in juvenile court to be open to the public where the minor is charged in a petition with one or more serious, violent, enumerated offenses. If the minor is adjudged a ward of the court based upon a Welfare and Institutions Code section 676 enumerated offense, then the court records, and the minor's name, are a matter of public record. However, pre-Proposition 21 law allowed the court to make an exception to disclosure of otherwise public juvenile court records, and/or the minor's name, by finding "good cause" exists for these items to remain confidential. The Initiative erodes what was left of confidentiality protections in the state's juvenile court system. The aforementioned "good cause" exception found in Welfare and Institutions Code section 676 has been eliminated. Moreover, juvenile courts are now required to post a daily listing of hearings open to the public, per operation of newly amended Welfare and Institutions Code section 676.

The Initiative also adds Welfare and Institutions Code section 602.5, which requires a juvenile court to report to the Department of Justice. the complete criminal history of any minor who is adjudicated a ward of the court based upon any felony.

The Initiative amends current Welfare and Institutions Code section 827.5, authorizing a law enforcement agency to release the name of any minor, age 14 or older, at the time of arrest, when that minor is taken into custody on the basis of a serious felony, as that term if defined in Penal Code section 1192.7. Former Welfare and Institutions Code section 827.6 has been repealed, and new language substituted, allowing a law enforcement agency to release the name, description and alleged offense of any minor who is the subject of an outstanding arrest warrant for a violent offense, as that term is defined in Penal Code section 667.5, where such release of information would assist in the apprehension of the minor, or the protection of the public.

Per former Welfare and Institutions Code section 827.1, local sheriff agencies received the identity and charging information on any minor adjudged a ward of the court based upon any felony. Such information was only allowed to be used, however, for law enforcement purposes, and was otherwise strictly confidential. The Initiative now permits local sheriff agencies to release the names of minors, age 14 or older, who are adjudicated on a felony enumerated in Welfare and Institutions Code section 707, subdivision (b).

Finally, the state's juvenile record sealing procedure, located at Welfare and Institutions Code section 781, have been amended to further restrict the availability of sealing procedures. Under pre-Proposition 21 law, a minor who was adjudged a ward of the court on the basis of an offense enumerated in Welfare and Institutions Code section (b), (d)(2), or (e), was eligible to request having his or her record sealed only after six years had elapsed from the time of committing the enumerated offense. The Initiative now categorically prohibits the sealing or destruction of juvenile court records pertaining to all minors

adjudicated for any Welfare and Institutions Code section 707, subdivision (b) enumerated offense committed when age 14 or older.

IX. Vandalism:

The Initiative lowers the monetary threshold of felony vandalism from $50,000 to $400, rendering virtually any act of vandalism a felony. Vandalism involving property damage in an amount under $400 remains a misdemeanor, but is subject to a maximum of one year in the county jail, in lieu of the former six month maximum. Given that vandalism is a textbook juvenile offense, encountered frequently throughout the state's juvenile courts, and given the increased consequences of felony adjudications under the Initiative, these changes to the vandalism laws are quite significant.

1.

2.

Mandatory Direct File @ WIC 602(b).

a. Minors Age 14+

b. Charged w/ Listed Offense in New 602(b) Crime List:

[i] Murder with special circumstances [PC 190.2]

+ D.A. alleges M personally killed the V.;

OR

[ii] Enumerated Sex Offenses;

+ Alleges M. Personally Committed Offense;

+ Alleges Circumstance(s) per 1- Strike Law [PC 667.61]

D.A. DISCRETIONARY DIRECT FILE

1. First Sub-Category of D.A. Discretionary Direct File [707(d)]:

    a. M's 16+

    AND

    b. Charged w/ Offense Listed in New 707(b) Crime Liist;

    [i] Expanded List = (1) All Robberies

D.A. DISCRETIONARY DIRECT FILE

2. Second Sub-Category of D.A. Discretionary Direct File [707(d)]

a. M. = 14 + @ Time of Offense

AND

b. Current Offense Meets Any of Following Criteria:

[i] Current Offense Punishable by Death or Life Imprisonment; or

[ii] Personal use of firearm; or

[iii] Current offense enumerated on expanded W&I 707(b) list and at least one of following:

[A] V = Elderly or Disabled; or,

[B] Current Offense = Street Gang Offense (PC 186.22); or,

[C] Current Offense = Hate Crime; or,

[D] Prior 602 adj for 7 07(b) Offense @ Any Age;

D.A. DISCRETIONARY DIRECT FILE

Third Sub-Category of D.A. Discretionary Direct File [707(d)]

a. M. 16 +

AND

b. Previously Adj. 602 ward For *Any* Felony Commited @ Age 14+

AND

c. Current Offense Meets One of Following:

[i] V =Elderly or Disabled;

[ii] Hate Crime [gender, race, sexual orientation, etc.];

[iii] Street Gang Offense per PC 186.22.

Revamped & Expanded Judicial Waiver; 707(a) and 707(c)

1. 1st Judicial Waiver Sub-Category :

   a. M's 14 -15 Years Old

      AND

   b. Charged w/ 707(b) offense [Expanded 707(b) list].

2. 2nd Judicial Waiver Sub-Category = "Three Strike" Analog :

   a. "Two Juvenile Felony Adj For Offenses Committed @ Age 14+

      AND

   b. M is Presumptively Unfit On Any 3rd Felony @ Age 16+"

3. 3rd Judicial Waiver Sub-Category : Very Rare

   a. Only Category of Presumptively Fit Minors Eligible For Transfer Where DA Bears BOP

   b. M = 16-17 on any Offense Which Does Not Qualify M. for

      [i] Direct File

      [ii] Judicial Transfer w/ Presumption of Unfitness

THREE STRIKES, VIOLENT FELONIES AND PROPOSITION 21

July, 2000

Alex Ricciardulli
Los Angeles County Public Defender's Office

Proposition 21 was called the "Gang Violence and Juvenile Crime Prevention Act." The changes made by the new law that got the most publicity were those allowing prosecutors to charge some juveniles as young as 14 years of age in adult court without judicial approval and enhancing punishment for gang-related felonies.

Receiving virtually no fanfare was Prop. 21's addition of priors that can be used to subject adults to sentences as great as 25-years-to-life in prison under the Three Strikes law, and the enactment of new "violent felonies" which require that defendants who receive prison terms serve 85% rather than 50% of their sentences.

This Outline Contains The Following:

I

THE NEW "STRIKE" PRIORS

New Adult "Strikes"

1. Terrorist threats under PC § 422. (PC § 1192.7(c)(38).)
2. Intimidation of witnesses under PC § 136.1. (PC § 1192.7(c)(37).)
3. Any felony committed on behalf of a gang under PC § 186.22. (PC § 1192.7(c)(28).)
4. Any conspiracy to commit crimes in PC § 1192.7(c). (PC § 1192.7(c)(41).)
5. Exploding a destructive device causing any injury (not necessarily GBI). (PC § 1192.7(c)(16).)
6. Carjacking under PC § 215. (PC § 1192.7(c)(27).)
7. Assault to commit mayhem, rape, sodomy, etc. under PC § 220. (PC § 1192.7(c)(29).)
8. ADW on a public employee under PC §§ 245.2, 245.3, or 245.5. (PC § 1192.7(c)(32.)
9. Shooting a gun at a vehicle, inhabited dwelling, or aircraft under PC § 246. (PC § 1192.7(c)(33.)
10. Shooting from a vehicle under PC § 12034. (PC § 1192.7(c)(36).)
11. Any violation of the 10-20-life law under PC § 12022.53. (PC § 1192.7(c)(40).)
12. Throwing acid or flammable substances under PC § 244. (PC § 1192.7(c)(30).)
13. Assault on a policeman or firefighter under PC § 245. (PC § 1192.7(c)(31).)
14. Rape in concert or with a foreign object under PC § 264.1. (PC § 1192.7(c)(34).)
15. Continuous sexual abuse of a child under PC § 288.5. (PC § 1192.7(c)(35).)
16. Maybe all PC § 245 assaults. (PC § 1192.7(c)(31).)
17. Probably not felony false imprisonment under PC § 210.5. (Former PC § 1192.7(c)(22).)

New Juvenile "Strikes"

1. Unarmed robbery under PC § 211. (WIC § 707(b)(3).)
2. Any violation of the 10-20-life law under PC § 12022.53. (WIC § 707(b)(17).)
3. Voluntary manslaughter under PC § 192. (WIC § 707(b)(30).)
4. Carjacking under PC § 215 while armed with a weapon. (WIC § 707(b)(25).)
5. Kidnaping under PC § 208(d). (WIC § 707(b)(26).)
6. Kidnaping during a carjacking under PC § 209.5. (WIC § 707(b)(27).)
7. Discharge of a firearm from a vehicle under PC § 12034. (WIC § 707(b)(28).)

8. Exploding a device with intent to commit murder under PC § 12308. (WIC § 707(b)(29).)

II

THE NEW "VIOLENT FELONIES"

1. All robberies under PC § 211. (PC § 667.5(c)(9).)
2. Causing inhabited property to burn under PC § 451(b). (PC § 667.5(c)(10.)
3. Exploding destructive devices under PC §§12309, 12310. (PC § 667.5(c)(13).)
4. All kidnapings. (PC § 667.5(c)(14).)
5. Assault to commit mayhem, rape, sodomy, etc. under PC § 220. (PC § 667.5(c)(15.)
6. Extortion on behalf of a gang under PC § 186.22. (PC § 667.5(c)(18).)
7. Witness intimidation on behalf of a gang. (PC § 667.5(c)(20).)
8. Residential burglary when someone is home. (PC § 667.5(c)(21).)
9. Any violation of the 10-20-life law under PC § 12022.53. (PC § 667.5(c)(22.)

III

THE ARGUMENT THAT ONLY POST-PROP. 21 PRIORS COUNT AS "STRIKES"

First, a **warning**: we lost a similar argument when the original 3-Strikes law was first enacted in 1994. Miserably, too. I counted 21 published opinions saying that pre-March 7, 1994, priors counted as "strikes." (One of the latest being People v. Green (1996) 50 Cal.App.4th 1076.) So, what do you think of our likelihood of success on this issue in Prop. 21 land?

Second, a **guarantee** of an issue we will win regarding Prop. 21: The current offense had to have occurred on or after March 8, 2000, in order for the new adult and juvenile "strike" priors to apply. Why so confident here? (1) Prop. 21 itself says that the new crime has to be on or after March 8, 2000. (PC §§ 667.1, 1170.125.) (2) It would be ex post facto if the "strikes" applied to current offenses from before March 8, 2000. (See People v. Smith (1983) 34 Cal.3d 251, 259-260; People v. d'A Philippo (1934) 220 Cal. 620, 623-624.)

(3) **The D.A.s have conceded that the new priors apply only when the current offense occurred on or after March 8, 2000!** (See Calif. District Attorneys Assn. Implementation Guidelines For Prop. 21, by San Diego County D.D.A. Charles E. Nickel.)

For what it's worth, here's our argument on pre-March 8, 2000, priors:

The June 30, 1993, "Freeze" And Prop. 21's Repeal:

The PC § 667(h) "freeze" on the type of priors that can count as "strikes" states "All references to existing statutes in subdivisions (c) to (g), inclusive, are to those statutes as they existed on June 30, 1993." The similar 3-Strikes Initiative "freeze" (in Section 2 of the Initiative) states "All references to existing statutes are to statutes as they existed on June 30, 1993." PC § 667(d) provides that priors count as "strikes" if they are on the list in PC §§ 667.5(c), or 1192.7(c), or, for most juvenile adjudications, in WIC § 707(b) (see People v. Garcia (1999) 21 Cal.4th 1); PC § 1170.12(b), also states that priors count as "strikes" if they are in §§ 667.5(c), or 1192.7(c), or in WIC § 707(b), for most juvenile adjudications.

Crimes added to these lists since June 30, 1993, are not considered "strikes." For example, crimes such as carjacking have been added since June 30, 1993, however, since these crimes were not on the lists on June 30, 1993, they do not count as "strikes." (People v. Nava (1996) 47 Cal.App.4th 1732.) The only exception to this rule is when the defendant's conduct in the prior was listed on the June 30, 1993, version of § 1192.7(c). Thus, although carjacking was not on the list in June 30, 1993, if the defendant was convicted of carjacking and personal use of a firearm, the crime does qualify as a "strike" because the conduct of committing a felony using a firearm is on the June 30, 1993, list. (See People v. Nava, supra, 47 Cal.App.4th 1732, 1738.)

Prop. 21's repeal of the June 30, 1993, "freeze" is found in two sections of Prop. 21, one dealing with the version of the 3-Strikes law in PC § 667, and the other with the Initiative version of the 3-Strikes Law, which was enacted as Proposition 184.

Section 14 of Prop. 21 enacted PC § 667.1, and it states,

"Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by this act." (Emphasis added.)

Section 16 of Prop. 21 enacted PC § 1170.125, and it states,

"Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994 General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Section 1170.12 are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by this act." (Emphasis added.)

The Qualification to Prop. 21's repeal of the "freeze":

Prop. 21 repealed the June 30, 1993, "freeze," but with the qualification that the repeal applies only "for all offenses committed on or after the effective date of this act." This qualification should be interpreted to mean that the repeal applies only to current and past offenses committed after the effective date of Prop. 21. In other words, the qualification should be construed so that the repeal applies only when both the current crime and the defendant's prior occurred after the date Prop. 21 went into effect.

This interpretation avoids rendering the qualification mere surplusage. It also respects the rule that ambiguous statutes should be construed in favor of criminal defendants.

A construction of a statute where some of its words are rendered surplus should be avoided; some meaning should be attributed to every word and phrase in a law. (See South Dakota v. Brown (1978) 20 Cal.3d 765, 776; People v. Espinoza (1979) 99 Cal.App.3d 59, 72.) Requiring that a defendant's prior be suffered on or after the date of Prop. 21's enactment avoids violating this rule. If Prop. 21's qualification was read to require only that the defendant's current offense have occurred after the effective date of the proposition, the qualification would be surplus and redundant.

Redundancy arises because the due process clause in the state and federal constitution already bar a statute's increase of a defendant's sentence by adding prior convictions when

the defendant's current offense was committed before the date of the statute's enactment. (See People v. Smith (1983) 34 Cal.3d 251, 259-260.) A statute which would add priors to a defendant's current crime when the current offense occurred before the statute's enactment would violate the ban to ex post facto laws and be unconstitutional. (Ibid.)

For example, when Proposition 8 enacted five-year priors in what is now PC § 667(a) the Supreme Court held that it would be ex post facto to use a defendant's priors to increase a sentence when the defendant's current offense occurred before the date Proposition 8 became effective. (See People v. Smith, supra, 34 Cal.3d 251, 261.) Similarly, where a particular crime was not included in the class of prior offenses which made one a habitual criminal under former PC § 644, a subsequent amendment including that crime could not be applied to a defendant who had previously been convicted of the prior, but who had committed the current offense before the addition of the prior. (People v. d'A Philippo (1934) 220 Cal. 620, 623-624.)

An enacting body is deemed to be aware of existing constitutional principles and judicial decisions in effect at the time legislation is enacted. (Bailey v. Superior Court (1977) 19 Cal.3d 970, 977-978, fn. 10.) This rule applies to legislation enacted by initiative. (People v. Weidert (1985) 39 Cal.3d 836, 844; In re Lance W. (1985) 37 Cal.3d 873, 890, fn. 11.) It is thus presumed the drafters of Prop. 21 and the electorate knew of the ex post facto bar to retroactive application of the law.

Therefore, if Prop. 21's qualification that the June 30, 1993, "freeze" should be lifted "for all offenses committed on or after the effective date of this act" referred merely to all current offenses, the qualification would not be a qualification. It would be meaningless in light of fundamental principles of constitutional law that already require the same thing.

To the extent that Prop. 21 is ambiguous on whether the "freeze" should be lifted for current crimes or for current and past crimes, the defendant is entitled to the benefit of doubt. The California Supreme Court has made clear that a defendant must be given every

reasonable doubt whether a criminal statute is applicable to him. (People v. Caudillo (1978) 21 Cal.3d 562, 576.) "When the statutory language is susceptible of two constructions, we are required to construe the statute as favorably to the defendant as its language and the circumstance of its application reasonably permit and give the defendant the benefit of every reasonable doubt concerning the strict interpretation of words or the construction of a statute. (People v. Overstreet [(1986)] 42 Cal.3d 891, 896.)" (People v. Rojas (1988) 206 Cal.App.3d 795, 801.)

The "effective date" of Prop. 21 was March 8, 2000, the day after the March 7, 2000, election wherein it was approved by the electorate. (People v. Smith, supra, 34 Cal.3d 251, 257.) If a defendant's prior conviction was suffered before March 8, 2000, under the argument above, the prior does not count as a "strike."

Presto!!

(If you like my arg., I also have some swampland in Fla. I want to sell you . . . .)

IV

SOME PRIORS VIOLATE THE SINGLE-SUBJECT RULE

Since June 30, 1993, the Legislature has added six offenses to the list of priors in PC § 1192.7(c): (1) Carjacking; (2) Throwing acid or flammable substances; (3) Assault with a deadly weapon on a firefighter; (4) Rape with a foreign object or in concert; (5) Continuous sexual abuse of a child; and, (6) Any violation of the 10-20-life law.

These crimes did not count as "strikes" due to the 3-Strikes law's "freeze" in PC § 667(h) which barred using priors not in 1192.7 as of June 30, 1993. Prop. 21 repealed the "freeze," however, the six priors are not related to Prop. 21's purpose of eradicating juvenile and gang crimes. Crimes like continuous sexual abuse by resident molesters and assaults on firefighters do not appear to even tangentially deal with juvenile or gang crimes.

The California Constitution requires that an initiative embrace only one subject within its provisions. This is known as the single-subject rule, and it provides that "An initiative measure embracing more than one subject may not be submitted to the electors or have any

effect." (Art. II, § 8, subd. (d).) In order for an initiative or proposition to not violate the single-subject rule, all of the initiative's parts must be "reasonably germane" to each other, "and to the general purpose or object of the initiative." (Legislature v. Eu (1991) 54 Cal.3d 492 .) The consequences of violating the single-subject rule can be devastating. Under the Constitution, if part of a proposition is not "reasonably germane" to its subject, the entire proposition is invalid and unenforceable. (Senate v. Jones (1999) 21 Cal.4th 1142 .)

It is highly unlikely that the inclusion of a few "strike" priors will have wiped out all of Prop. 21. However, an argument can be made that the section in Prop. 21 that thawed the June 30, 1993, "freeze" should be interpreted to only authorize the crimes specifically added by the proposition to be considered "strike" priors. In other words, the bulk of the priors like terrorist threats, gang crimes, etc. became "strikes," but the six enumerated above did not. The language of the section, stating that the list of "strikes" to be used is the one existing "on the effective date of this act, including amendments made to those statutes by this act" (Prop. 21, § 14), is susceptible to this construction.

(Did I already tell you that the swampland in Fla. comes with free reptilian pets?)

V

"STRIKE" PRIORS FOR PC § 245

This is a real mess. For years we have been advising clients that some forms of PC § 245 assaults did not count as "strikes." Then, along comes Prop. 21, and prosecutors are now arguing that all violations of PC § 245, including assaults by means likely to produce great bodily injury where **no** weapon was used and **no** GBI was actually inflicted, count as "strike" priors.

We have a counter-argument. However, until the issue is resolved by the appellate courts, **you should inform clients that all forms of PC § 245 may well count as "strikes."**

The prosecution's argument is based on the text of Prop. 21, and the impact of PC § 7.5. Prop. 21 amended the list of "serious felonies" to add PC § 1192.7(c)(31), and the new provision states,

"assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245."

PC § 7.5 states, in full:

"Whenever any offense is described in this code, the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), or the Welfare and Institutions Code, as criminal conduct and as a violation of a specified code section or a particular provision of a code section, in the case of any ambiguity or conflict in interpretation, the code section or particular provision of the code section shall take precedence over the descriptive language. The descriptive language shall be deemed as being offered only for ease of reference unless it is otherwise clearly apparent from the context that the descriptive language is intended to narrow the application of the referenced code section or particular provision of the code section."

In a nutshell, PC § 7.5 provides that if a law references another statute using both descriptive language and by enumerating a particular code section, it is the code section that controls. The prosecutors thus argue that we should ignore the descriptive language in PC § 1192.7(c)(31) (which says nothing about assaults by means likely to produce great bodily injury), and read § 1192.7(c)(31) as if it simply said violations of "Section 245" count as "strikes."

The counter-argument is that the only types of PC § 245 violations that can count as "strikes" are those listed in the descriptive language of PC § 1192.7(c)(31): ●PC § 245(a)(1) "assault with a deadly weapon"; ●PC § 245(a)(2) assault with a "firearm"; ●PC § 245(a)(3) assault with a "machinegun, [or] assault weapon"; ●PC § 245(b) assault with a "semiautomatic firearm"; and ●PC § 245(c) "assault on a peace officer or firefighter." Under this interpretation of the statute, assaults by means likely to produce GBI where no weapon was used and no GBI was inflicted do <u>not</u> count as "strikes."

The counter-argument is based on the escape clause in PC § 7.5: "The descriptive language shall be deemed as being offered only for ease of reference unless it is otherwise clearly apparent from the context that the descriptive language is intended to narrow the application of the referenced code section or particular provision of the code section." (Emphasis added.) We should argue that from the context of the statute, the only type of assaults that can count as "strikes" are the ones involving a weapon, or assaults by means of force likely to produce GBI against peace officers or firefighters, as provided in the descriptive language. PC § 1192.7(c)(31)'s use of the word "in" denotes that the descriptive language was meant to narrow the types of 245s that qualify. If the descriptive language was there merely for ease of reference, the statute would have read: "assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, violation of Section 245." The word "in" was used to narrow.

The argument can be buttressed by PC § 1192.7(c)(31)'s impact on existing and well-established case law. The Supreme Court in People v. Rodriguez (1998) 17 Cal.4th 253, held that if all the proof a prosecutor has is that the defendant's prior was for "PC 245(a)(1)" and "ASLT GBI / DLY WPN," this was not enough to prove a "strike" prior. The court reasoned that PC § 245(a)(1) can be violated in ways that it would not be a "strike" prior. They held that it is only when the defendant is convicted of PC § 245(a)(1) for personally using a dangerous or deadly weapon that it is a "strike" prior; if the defendant is convicted of PC § 245(a)(1) because he aided and abetted someone who used a weapon, or was convicted because he used force likely to produce great bodily injury (hands and/or feet with no GBI actually resulting), then it is not a "strike" prior.

The rule is that a statute that repeals existing and established law on a subject must do so in very clear and explicit terms. (People v. Superior Court (Romero) (1996) 13 Cal.4th 497, 518; People v. Siko (1988) 45 Cal.3d 820, 824.) Since PC § 1192.7(c)(31) is subject to two interpretations, the one preserving established law is the one that should be adopted.

VI

THE FELONY FALSE IMPRISONMENT PRIOR

This prior is for false imprisonment that involves resisting arrest or where the defendant uses the victim as a human shield. (PC § 210.5.) In 1999 the Legislature added it to the PC § 1192.7 list. Prop. 21 re-enacted PC § 1192.7, however, it left PC § 210.5 off the list! (What happened was 210.5 was added to 1192.7 after the date that the initiative qualified to be placed on the ballot.) Your argument here is that the plain text of Prop. 21 controls. The new PC § 1192.7(c) list does not have PC § 210.5 on it, so that is the end of the matter. PC § 210.5 is not a "strike" prior, and it is not even a five-year prior. (This one we should win; the D.A.s are conceding this crime isn't a "strike.")

VII

STRATEGIES TO PREVENT USE OF PRIORS AS FUTURE "STRIKES"

So, you're considering pleading your client guilty and you want to avoid the offense being used as a "strike" prior in the future. Is there anything you can do? There are very few cases on this in the context of Three Strikes. Let's go over them, and then talk about strategies to bar use of priors as future "strikes."

Case Background

First Principle: Even if a crime is not on the list of "serious" or "violent" felonies it can still be used as a "strike." The trier of fact can examine the "entire record of the conviction" to determine if the defendant's prior qualifies as a "serious" or "violent" felony. (People v. Guerrero (1988) 44 Cal.3d 343, 345.)

Second Principle: Only admissible documentary evidence that qualifies under some exception to the hearsay rule can be considered as part of the record of conviction to determine if a prior qualifies as a "strike." (People v. Reed (1996) 13 Cal.4th 217, 223.)

Strategy # 1

Plead a defendant guilty to some crime that is not on the "serious" or "violent" felony list (or the WIC § 707(b) list for juveniles), **AND** make sure there is no admissible evidence in the record that shows that what the defendant did was on the list. For example, a

preliminary hearing can be used to prove the nature of a prior (Reed, supra, 13 Cal.4th 217), and so can a defendant's admissions in a probation report (People v. Monreal (1997) 52 Cal.App.4th 670). If you know the case is going to plead out, consider pleading the defendant guilty before the preliminary hearing, or waiving the preliminary hearing, and make sure the defendant does not talk to the probation officer concerning the case.

Strategy # 2

Have the prosecution agree that the case will not be used as a "strike" prior in the future. **THIS IS NOT AN ADEQUATE SUBSTITUTE FOR STRATEGY # 1:** the only case on this (People v. Blackburn (1999) 72 Cal.App.4th 1520) is very unfavorable.

However, an explicit agreement will give you the argument if they try to use the case as a "strike" prior that (1) the prosecution should be barred from asserting the case as a "strike" under the principles of equitable and promissory estoppel (See Lusardi Construction Co. v. Aubry (1992) 1 Cal.4th 976, 994-995); and (2) that the defendant should be allowed to withdraw his or her plea of guilty if the case is alleged as a "strike" because he would not have pled guilty if he had not gotten the representation that the case would not be used as a "strike." (See People v. Walker (1991) 54 Cal.3d 1013, 1026-1027.)

People v. Blackburn, supra, 72 Cal.App.4th 1520 has some bad language regarding plea bargains only binding the prosecution to the sentence to be imposed in the case and not being binding to the use of a case as a prior in the future. But, there was no plea bargain in Blackburn that specifically barred use of the case as a prior, and no discussion of equitable or promissory estoppel or of the right to withdraw a guilty plea.

Strategy # 3

You can minimize the number of priors that can result after a defendant is convicted by having the judge use PC § 1385 to dismiss counts rather than staying them when PC § 654 applies. Remember, a count stayed under PC § 654 can still be used as a "strike." (People v. Benson (1998) 18 Cal.4th 24.) So a defendant could wind up with **two "strikes" for one**

punch! (In re Jose H. (2000) 77 Cal.App.4th 1090 [def. convicted PC §§ 243(d) & 245(a)(1) for breaking a person's cheek with his fist because the person was trying to "hook up with Minerva"; Ct. of Appeal says this is two "strikes"].)

If the judge dismisses the count under 1385, "The defendant stands as if he had never been prosecuted for the charged offense." (People v. Alvarez (1996) 49 Cal.App.4th 679, 690.) A count dismissed in this manner probably cannot be used as a "strike" prior.

VIII

EX POST FACTO PROBLEMS WITH THE NEW "VIOLENT FELONIES"

The most common new "violent felonies" that subject defendants to the 15% custody-credit limitation in PC § 2933.1 are unarmed robberies. (PC § 667.5(c)(9).) Under Prop. 21, all robberies now count as "violent felonies" to reduce a defendant's credits.

If the defendant's current "violent felony" is one of the new ones added by Prop. 21 and it occurred before March 8, 2000, it would be unconstitutionally ex post facto to reduce the defendant's custody credits. (See People v. Smith (1983) 34 Cal.3d 251, 257 [an initiative becomes effective the day after it is approved by the voters].) Here's the full argument on this:

The United States Constitution prohibits Congress (art. I, § 9) and the states (art. I, § 10) from "pass[ing]" any "ex post facto law." The California Constitution contains a similar provision (art. I, § 9). The United States Supreme Court has held that reduction of custody credits through a statute that is enacted after the date a defendant commits his or her crime violates the constitution as an ex post facto law. (See Weaver v. Graham (1981) 450 U.S. 24, 25.) The present situation is indistinguishable from Weaver v. Graham.

In Weaver v. Graham, the defendant committed his crime in 1976. The statute in Florida at that time computed his custody credits in prison using a specific formula. In 1979, the formula was changed so that the defendant would have served approximately two-and-a-half years more in prison than under the previous formula.

The Supreme Court barred the new formula from applying to the defendant. The Court held that the defendant's punishment was being increased by use of the new formula. The new law was unconstitutional under the ex post facto clause: "the new provision constricts the inmate's opportunity to earn early release, and thereby makes more onerous the punishment for crimes committed before its enactment. This result runs afoul of the prohibition against ex post facto laws." (Weaver v. Graham, supra, 450 U.S. 24, 35-36.)

The rule in Weaver v. Graham has been subsequently approved by the United States Supreme Court. (Lynce v. Mathis (1997) 519 U.S. 433; Carmell v. Texas (2000) 120 S.Ct. 1620.) It is the same rule used in California for determining whether a statute is ex post facto. (See In re Lomax (1998) 66 Cal.App.4th 639, 646.)

In the present situation, as in Weaver v. Graham, it would be unconstitutional to reduce the defendant's custody credits under a statute enacted after he committed the current crime. The effect would be to increase his over-all sentence in the same manner as if the maximum penalty for his crime had been increased by the law.

IX

THE ARGUMENT THAT ALL OF THE NEW "VIOLENT FELONIES" ARE INVALID

An additional reason to bar application of PC § 2933.1 to the new "violent felonies" is the doctrine in Palermo v. Stockton Theatres, Inc. (1948) 32 Cal.2d 53. Prop. 21 added crimes to the list of "violent felonies" in PC § 667.5(c), however, it did not amend the time credit reduction statute, PC § 2933.1. Under Palermo, the failure to amend § 2933.1 means that the new felonies do not reduce a defendant's time credits under the 15% formula in § 2933.1.

The Reduction Of Custody Credits Statute And The List Of Felonies That Were Referenced By It

PC § 2933.1 provides, in relevant part,

"(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933."

PC § 2933.1 was enacted in 1994. At the time of its enactment, § 667.5(c), listed the following "violent felonies":

"(1) Murder or voluntary manslaughter. [¶] (2) Mayhem. [¶] (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262. [¶] (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. [¶] (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. [¶] (6) Lewd acts on a child under the age of 14 years as defined in Section 288. [¶] (7) Any felony punishable by death or imprisonment in the state prison for life. [¶] (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55. [¶] (9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery. [¶] (10) Arson, in violation of subdivision (a) of Section 451. [¶] (11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. [¶] (12) Attempted murder. [¶] (13) A violation of Section 12308. [¶] (14) Kidnapping, in violation of subdivision (b) of Section 207. [¶] (15) Kidnapping, as punished in subdivision (b) of Section 208. [¶] (16) Continuous sexual abuse of a child, in violation of Section 288.5. [¶] (17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section

12022 in the commission of the carjacking." (See People v. Fitzgerald (1997) 59 Cal.App.4th 932, 935, fn. 3.)

The felonies on the list in § 667.5 as of 1994 are the only ones that reduce a defendant's custody credits under PC § 2933.1. Using the felonies added by Prop. 21 to reduce custody credits would violate the Palermo doctrine.

Prop. 21 Failed To Comply With Palermo In Amending § 667.5 But Not § 2933.1

The Palermo doctrine is a fundamental rule of statutory amendment and application. Under the doctrine,

> "[W]here a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified . . . ." (Palermo v. Stockton Theatres, Inc., supra, 32 Cal.2d 53, 58-59.)

The corollary of the Palermo rule is that,

> "[W]here the reference is general instead of specific, such as . . . to a system or body of laws or to the general law relating to the subject in hand, the referring statute takes the law or laws referred to not only in their contemporary form, but also as they may be changed from time to time . . . ." (Palermo, supra, 32 Cal.2d at p. 59.)

These rules remain valid and applicable to the present day. (See In re Jovan B. (1993) 6 Cal.4th 801, 816-817; People v. Pecci (1999) 72 Cal.App.4th 1500, 1505.)

Once it is determined that a statute was referring to a specific statute instead of a general area of law, "Under Palermo, supra, it is to be presumed that this specific reference is to the code section as it existed at that time, in absence of an intention expressed to the contrary." (People v. Ramirez (1984) 154 Cal.App.3d Supp. 1, Supp. 11.)

The first step in the Palermo analysis is thus to determine whether PC § 2933.1's reference was specific or general. It was clearly specific. § 2933.1 specifically listed the code section which would be subject to credit reduction "Section 667.5." It did not reference "violent felonies" in general. References to code sections denote specific references. (See In re Jovan B., supra, 6 Cal.4th 801, 816-817, fn. 10, 819.)

The second step is to determine whether there was a clear intention expressed by the Legislature when it enacted § 2933.1 to rebut the presumption that the reference should be to § 667.5 as it existed in 1994. There is none. The statute that must be examined is the incorporating law, i.e., the one that references the other statute. (See People v. Domagalski (1989) 214 Cal.App.3d 1380, 1386 ["in cases where it is questionable whether only the original language of a statute is to be incorporated or whether the statutory scheme, along with subsequent modifications, is to be incorporated, the determining factor will be the legislative intent behind the incorporating statute"].)

The text of PC § 2933.1 does not show an intent to incorporate amendments to the list of "violent felonies" within § 2933.1. Several statutes in California specifically provide for such incorporation. (See, e.g., Bus. & Prof. Code, § 12 ["Whenever any reference is made to any portion of this code or any other law of this State, such reference shall apply to all amendments and additions thereto now or hereafter made"]; Welf. & Inst. Code, § 9 [same]; cf. Evid. Code, § 6 ["Whenever any reference is made to any portion of this code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made"].)

In contrast to these other laws, § 2933.1 is silent on incorporating subsequent amendments to § 667.5. The Palermo presumption has not been rebutted.

X

THREE STRIKES AND "VIOLENT FELONY" CUSTODY REDUCTION SCENARIOS

There Is An Important Case You Should Be Aware Of: In re Cervera, found at 74 Cal.App.4th 766: The Court of Appeal had held, in accord with People v. Stofle (1996) 45 Cal.App.4th 417, that a defendant sentenced to 25-years-to-life in state prison under the Three Strikes law receives no reductions for good-time/work-time while in prison, and must thus serve 100% of his prison sentence. **Review has been granted by the California Supreme Court.**

Although this is now a live issue, out of an abundance of caution, until the Supreme Court says otherwise in Cervera, 25 years = 25 years. Stofle remains good law, and the Department of Corrections will likely continue to use it in computing inmates' minimum period of incarceration prior to being eligible for release on parole.

A potpourri of time reduction scenarios

- A defendant with one "strike" prior must serve 80% of his prison sentence. (PC § 667(c)(5).)
- A defendant with at least two "strike" priors must serve 100% of his prison sentence, i.e., 25-to-life = 25 years before being eligible for parole. (Stofle (1996) 45 Cal.App.4th 417; but, Cervera, found at 74 Cal.App.4th 766 might change this rule.)
- The PC § 667(c)(5), Three Strikes credit limit does not apply to reduce pre-sentencing county jail credits. (See People v. Hill (1995) 37 Cal.App.4th 220.)
- The PC § 667(c)(5) limit reduces credits for time on enhancements (like PC § 667.5(b) "prison" priors) as well as on the current offense. (People v. Brady (1995) 34 Cal.App.4th 65.)
- If the defendant qualifies for the 85% time credit reduction under PC § 2933.1 because his current offense is a "violent felony," and also qualifies for the 80% reduction under PC § 667(c)(5) because he has one "strike" prior, the PC § 2933.1 reduction applies, and the defendant must serve 85% of his sentence. (People v. Caceres (1997) 52 Cal.App.4th 106; Hey, at least they didn't rule that both reductions applied, meaning the defendant had to serve 165% of his sentence!)

"Violent felony" time credit reductions

- A defendant with a current "violent felony" (as defined in PC § 667.5(c)), even if he has no "strike" priors, must serve 85% of his prison sentence. (PC § 2933.1.)
- The PC § 2933.1 limit does apply to reduce pre-sentencing county jail credits. (PC § 2933.1(b).)
- The PC § 2933.1 limit does not apply if the defendant gets probation. (In re Carr (1998) 65 Cal.App.4th 1525.)
- The 85% limit reduces credits for non-"violent" subordinate terms, so long as at least one of the defendant's current offenses is "violent." (People v. Palacios (1997) 56 Cal.App.4th 252.)

PROPOSITION 21 HANDOUT

By Albert J. Menaster
March, 2000

Proposition 21 enacts many provisions, impacting of many areas of the law. Other handouts will cover 3-Strike changes and juvenile law changes. This article covers the remaining changes.

NEW CRIME OF CONSPIRACY (Prop. 21, § 3)

Proposition 21 adds section 182.5 to the Penal Code.

> --creates a new crime of conspiracy for any person who, with knowledge of the gang's pattern of criminal activity, actively participates in the gang and "willfully promotes, furthers, assists, or benefits from any felonious conduct by members of that gang."
>
> --specifies the punishment for such conspiracy to be that "specified in subdivision (a) of Section 182."

Section 182, subdivision (a) provides punishment of one year in jail, or 16 months, two, or three years in prison.

The conspiracy crime in section 182.5 purports to punish a defendant who "actively participates" as a gang member with knowledge of the gang's pattern of criminal activity, if that defendant "benefits from any felonious conduct by members of that gang." This language is not only vague about what must be proven, but raises serious constitutional concerns.

The crucial portion of the new statute reads:

> ``any person who actively participates in any criminal street gang, as defined in subdivision (f) of Section 186.22, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, and who willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of that gang is guilty of conspiracy to commit that felony . . . . "

This statute thus apparently punishes an individual for associating with gang members who commit crimes if that individual in some ways benefits from felonious conduct of other gang members, even if that individual did not participate in any illegal conduct himself and does not know that he is benefiting from illegal conduct. For example, if a defendant associates with gang members, knows of their activities, does not participate in any felonious conduct, but borrows money from one of the gang members who unbeknownst to him has obtained the money in a robbery, that defendant has "benefitted from felonious conduct" of a gang member, and could be charged under this section,

even though the defendant has not engaged in any criminal conduct himself. This punishes a defendant, not for felonious conduct committed by him, but simply for associating with known gang members who commit crimes, and raises serious constitutional concerns implicating an individual's right of freedom of association. (NAACP v. Claiborne Hardware Co (1982) 458 U.S. 886, 916.)

GANG ENHANCEMENTS (Prop. 21, § 4)

Proposition 21 makes many other changes to the statutes governing criminal street gangs. Penal Code section 186.22, subdivision (a), makes it a crime to be in a member of such a gang and further the gang's interests, and Penal Code section 186.22, subdivision (b), adds an enhancement for commission of enumerated crimes where the defendant was a member of such a gang.

The crucial part of Penal Code section 186.22, subdivision (a), is:

``Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, ... "

The crucial part of Penal Code section 186.22, subdivision (b), is:

``any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, ... "

Propostion 21 makes the following changes and additions:

It increases the punishment for the enhancement in section 186.22, subdivision (b),

--from 1, 2, or 3 years to
--2, 3, or 4 years (Pen. Code § 186.22(b)(1))

EXCEPT

-if the crime is a serious felony (PC § 1192.7(c)), the term added is 5 years (Pen. Code § 186.22(b)(1))

EXCEPT

-if the crime is a violent felony (PC § 667.5, subd. (c)), the term added is 10 years (Pen. Code § 186.22(b)(1)

It eliminates the enhancement of 2, 3, or 4 years when the described felony is committed within 1000 feet of a school and instead makes it a factor in aggravation. (Pen. Code § 186.22(b)(2))

If the gang crime is a home invasion robbery, a carjacking, a felony violation of PC 246, a violation of 12022.55, extortion as defined in PC 519, or threats to victims and witnesses as

defined by 136.1, the punishment is an indeterminate term of life imprisonment with minimum term being greater of:

> --the term determined by the court using section 1170 for the underlying crime, including specified enhancements; or,
>
> --15 years if the felony is home invasion robbery, carjacking, felony 246, or section 12022.55, or if the felony is punishable by imprisonment for life the minimum term before parole eligibility will be 15 years; or,
>
> --7 years if the felony is extortion defined in PC 519 or threats to victims and witnesses as defined in PC 136.1 (See Pen. Code § 186.22(b)(4))
>
> A person convicted of an offense which is a wobbler, acting for street gang purposes, shall be punished either by one year in county jail or 1, 2, or three years in prison, but if the person is sentenced to the county jail the maximum is one year and the minimum is 180 days, with no release until the defendant has served 180 days. (Pen. Code § 186.22(b)(d).)

The definition of "pattern of criminal gang activity" is broadened to include:

> --conspiracy to commit

and the specified offenses are broadened to include

> --grand theft as defined in 487 a or c
>
> --grand theft firearm
>
> --terrorist threats as defined by PC 422
>
> --theft and 10851
>
> (Pen. Code § 186.22(e))

The quantum of proof is altered (Pen. Code § 186.22 (i)):

> --It need not be proven that the defendant was a gang member or dedicated all or substantial part of time to the gang.
>
> --It need not be proven that the defendant was a member of the gang.

--Only active participation (not defined) must be proven.

It provides the court with authority in the interests of justice to strike punishment for the enhancements or to refuse to impose the minimum jail sentence for misdemeanors. (Pen. Code § 186.22(g).)

The minimum sentence of 180 days raises many issues. The exact language is so unclear that the ultimate impact of the subsection is confusing. The section specifies that any person convicted of a public offense punishable as a misdemeanor or a felony, committed for gang purposes, shall be punished by imprisonment in a county jail not to exceed one year or in state prison for one, two, or three years, and the person must serve a minimum of 180 days in jail.

The crucial part of Penal Code section 186.22, subdivision (d), is:

``Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished . . . . "

On its face, this statute converts all "wobbler" crimes done for a gang, no matter what the possible sentence, into a crime of 1, 2, or 3 years. A grand theft, for example, which has a minimum term of 16 months would actually have the minimum term reduced to 1 year. A person would commits an ADW with a firearm, which could be punished by 2, 3, or 4 years would now be subject to only 1,2, or 3 years. The statute on its face makes all wobblers done for gang purposes punishable by 1,2, or 3 years in prison. A possible reading is that all misdemeanor crimes, such as petty thefts or trespassing or possession of less than one ounce of marijuana, committed for gang purposes, now become felonies, and even as misdemeanors carry a minimum 180 day jail sentence. Of course, this reading would also make all felonies committed for a gang into wobblers, including murder and robbery. Another possible reading of this statute is that it adds an enhancement to offenses done for the gang, though the statute does not use enhancement language. Obviously, this statute is unclear and borders on unintelligible. It remains to be seen how it will be interpreted.

Proposition 21 alters the quantum of proof so that the prosecution need not prove the person devotes all or a substantial portion of their time to gang efforts or is a gang member. "Active participation in the criminal street gang is all that is required." (Pen. Code § 186.22(i).)

RECRUITING PEOPLE INTO GANGS (Prop. 21, § 6)

Existing law made it a crime to use or threaten to use physical violence to coerce or solicit another person under the age of 18 to actively participate in a gang. If threats of force were used, the crime was punishable as an alternate felony/misdemeanor. If actual physical force was used, the crime was a straight felony punished by up to three years in state prison.

Under the new law, it is now against the law to solicit or recruit any person to actively participate in a criminal street gang, regardless or whether force or threats are used in the solicitation. The new crime is punishable by up to three years in prison. (Pen. Code § 186.26, subd. (a).)

Threatening physical violence to coerce or solicit another person to actively participate in a criminal street gang is now a straight felony punishable by 2, 3, or 4 years in state prison. (Pen. Code § 186.26, subd. (b).)

Using force to solicit them to participate or to prevent them from leaving the gang is punishable by 3,4, or 5 years in prison. (Pen. Code § 186.26, subd. (c).)

REGISTRATION FOR ADULTS AND MINORS WHO HAVE VIOLATED PENAL CODE SECTION 186.22(a); PENALTY FOR FAILURE TO REGISTER (Prop. 21, § 7-10)

Proposition 21 requires registration for both adults and juveniles, and applies if a person is found to have violated Penal Code section 186.22(a) (participation in a street gang), or in any case covered by the enhancements in Penal Code section 186.22(b) (felony in association with a gang), or if the juvenile or defendant commits "Any crime that the court finds is gang related at the time of sentencing or disposition." (Pen. Code § 186.30-186.33.)

There are grave constitutional problems in applying such a law to a juvenile, who has no right to jury trial before being convicted of a crime. There are additional constitutional problems in requiring this type of registration at all in cases other than sex offenses, where there is evidence that the person convicted remains a danger for a lifetime.

Further, the broad and undefined discretion given to judges to find an offense "gang related" is also probably unconstitutional. Moreover, that portion of the law has no notice or proof requirements, which would leave it constitutionally suspect. Finally, the language would permit requiring someone to register who has never been shown to be part of a gang, if the offense was found to be gang-related. Thus, people could be required to register who committed offenses against gang members, or who had friends or accomplices who happened to be gang members. Once again, there are real constitutional problems with such a law.

The registration requirement is effective at the time of "sentencing" or disposition in a juvenile case, and lasts for 5 years. Failure to register is a misdemeanor, but commission of a 186.30 offense while not registered adds a 16-2-3 enhancement. (Pen. Code § 186.33.)

DEATH PENALTY SPECIAL CIRCUMSTANCE (Prop. 21, § 11)

Proposition 21 adds to the list of special circumstances the killing of a victim while the defendant was an active participant in a criminal street gang, (the term active participant is not defined) and the murder was carried out to further the gang activities: "The defendant intentionally

killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang." (Pen. Code § 190.2, subd. (a)(22).)

This provision is imprecise in light of the extremely serious consequences it carries. Proposition 21 does away with the court-constructed definition of "active participation" and leaves no constitutional definition in its place. Likewise, the term "to further the gang activities" is extremely broad and vague. When a "narrowing" factor is vague, this fails to channel the jury's sentencing discretion, and is thus unconstitutional. (See Stringer v. Black (1992) 503 U.S. 222.) Further, this amendment creates an extreme broadening the death penalty to include those individuals who will be death-qualified. There are a variety of challenges that may be brought to this special circumstance, challenges that will have to be developed over time.

VANDALISM (Prop. 21, § 12)

Under existing law, it is a misdemeanor to cause vandalism damage up to $5,000.00. Damage over $5,000.00 is an alternate felony or misdemeanor punishable by imprisonment and a fine of up to $50,000.00.

Under Proposition 21, it is an alternate felony/misdemeanor if the vandalism damage equals or exceeds $400.00, punishable by imprisonment in the state prison or the county jail and a fine of up to 50,000.00. (Pen. Code § 594 (b)(1).) Vandalism damage less than $400 is a misdemeanor. (Pen. Code § 594 (b)(2)(A).)

WIRETAPPING (Prop. 21, § 13)

Proposition 21 amends section 629.52 to include a felony violation of Penal Code section 186.22 among the list of crimes for which a judge can authorize interception of wire, electronic digital or cellular telephone communication. It is questionable whether this amendment comports with the Federal wiretapping laws. (See 18 U.S.C. §§2510 et. seq.)

VIOLENT FELONIES (Prop 21, § 15)

Proposition 21 adds to Penal Code section 667.5's list of violent felonies (which qualify as strike priors, and permit custody credits in jail and prison under Penal Code section 2933.1 of only 15%) the following new felonies:

--Any robbery (currently only first degree robberies with a deadly weapon qualify)

--Arson, Penal Code section 451, subdivision (b) (currently only subdivision (a) qualifies)

--Explosion of destructive devices causing death or GBI (Pen. Code §§12309, 12310)

--Any kidnapping

--Assault with intent to commit mayhem, rape, sodomy, or oral copulation

--Any carjacking (currently only carjacking with a deadly weapon qualifies)

--Gang-related extortion

--Gang-related intimidation of a victim or witness

--Residential burglary where someone other than an accomplice was present in the residence during the commission of the burglary

--Any violation of the 10-20-life statute, using a firearm during an enumerated felony

EFFECT OF PROPOSITION 21 ON JUVENILE PROVISIONS

March 8, 2000

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EFFECT OF PROPOSITION 21 ON JUVENILE PROVISIONS

I. Prosecution of Minors as Adults

Prior to the effective date of Proposition 21, the law recognized two ways in which persons under the age of 18 years could be prosecuted as adults. Pursuant to W&IC Section 602(b), if a minor 16 years or older, who had sustained one or more prior adjudications resulting in wardship for felonies committed after reaching age 14, committed a new offense enumerated in Section 602(b), then the matter was required to be filed in a court of criminal jurisdiction. The prosecutor was required to allege and prove the "prior." Following trial, if the minor was not convicted as charged, the case could be subject to a post-conviction fitness hearing and/or "reverse remand" to the juvenile court, pursuant to Penal Code Sections 1170.17 and 1170.19.

Alternatively, the prosecutor could file a motion pursuant to W&IC Section 707 *et seq.*, requesting the juvenile court to find a minor "unfit" for juvenile court proceedings following a hearing on the motion in the juvenile court. A minor who was at least age 14 but less than 16 could be declared unfit if he was alleged to have committed one or more of the serious crimes enumerated in Sections 707(d) or (e), subject to certain presumptions and an analysis by the court of the five criteria set forth in Section 707. Minors age 16 or older could be declared unfit for the commission of any criminal offense; however, a shifting presumption of "fitness" or "unfitness" applied, depending upon whether or not the minor was alleged to have committed one of the 28 offenses listed in Section 707(b).

Proposition 21 Changes

As of the effective date of Proposition 21 (March 8, 2000; 12:01 a.m.), there are now three mechanisms by which minors can be prosecuted as adults. These may generally be characterized as *"legislative waiver,"* in which the juvenile court has no jurisdiction over certain offenses committed by minors 14 years of age or older; *"direct file,"* in which the prosecutor has discretion to file certain cases in a court of criminal jurisdiction, based on the age of the minor and the type of offense committed; and, *"judicial waiver,"* which uses the motion procedure in the juvenile court described above (a "707" motion and hearing).

Legislative Waiver Provisions:

Section 602(b) W&IC
If a minor age 14 or older is charged with one or more of the following offenses, the case *must* be filed in a court of criminal jurisdiction:

- 187 PC 1st degree with special circumstances, if it is alleged that the minor personally killed the victim; or,
- "One Strike" sex offense alleged pursuant to 667.61 PC, if it is alleged that the minor personally committed the offense.

Please Note: Prosecutor must *affirmatively allege* special circumstance or 667.61 PC, *and* "personal commission" or "personal killing" for mandatory adult filing.

Direct File (Prosecutor Discretion) Provisions:

Section 707(d)(1) W&IC
If minor is age 16 or older and commits offense listed in Section 707(b) W&IC, prosecutor may file directly in court of criminal jurisdiction.

Section 707(d)(2) W&IC
If minor is age 14 or older, and commits one or more of the following types of offenses, the prosecutor may file directly in court of criminal jurisdiction:

- Offense punishable by life or death if committed by adult
- Minor alleged to have personally used firearm in commission or attempted commission of felony, as described in 12022.5 PC
- Minor alleged to have committed offense listed in Section 707(b) W&IC, plus one or more of the following circumstances apply:
  - Minor has a prior finding for having committed an offense listed in Section 707(b) W&IC.
  - Criminal Street Gang Offense, as defined in Section 186.22(f) PC.
  - Hate Crime, as described in Section 422.6 PC *et seq.*
  - Victim 65 years or older, or disabled (blind, deaf, paraplegic, quadriplegic, or confined to a wheelchair, and disability was known or reasonably should have been known to minor at time of commission).

Section 707(d)(3) W&IC
If a minor is 16 years of age or older, has a prior felony finding for an offense committed when the minor was 14 years or older, and commits one or more of the following types of offenses, the prosecutor may file directly in a court of criminal jurisdiction:

- Any felony in which it is alleged victim 65 years or older, or disabled (see definition above).
- Any felony hate crime, as described in Section 422.6 PC *et seq.*
- Any offense committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 PC.

Please Note: Pursuant to Section 186.22(d) PC as enacted by Proposition 21, the "street gang benefit"-type offense could actually be a *misdemeanor*, under the new wobbler offense statute.

Section 707(d)(4)
At the time of the preliminary hearing in any case "direct filed" pursuant to 707(d), magistrate must make finding that reasonable cause exists to believe minor comes within provisions of 707(d). If not, case transferred to juvenile court.

Section 707(d)(5)
If prosecutor *could* have "direct filed" case in court of criminal jurisdiction but elected to file it in juvenile court, and minor is found to come within Section 602(a), then minor *must* be committed to secure juvenile facility. (No minimum time requirement stated).

Section 707(d)(6)
If minor is "found" to be unfit for juvenile court treatment pursuant to 707(d), (presumably, such a "finding" is implied by the prosecutor exercising discretion to "direct file" the case), and is tried in a court of criminal jurisdiction and found guilty, the judge may commit the minor to CYA in lieu of state prison, subject to the limitations of Section 1732.6 W&IC.

- *Section 1732.6 W&IC:* CYA commitments are now prohibited if any of the following:
  - 667.5(c) PC or 1192.7 PC conviction, sentenced to:
    - Life
    - Indeterminate term to life
    - Determinate term plus minor's age would exceed 25 years

  - Minor convicted in a criminal action for:
    - 602(b) W&IC ("legislative waiver") offense
    - 707(d)(1),(2),or (3) ("direct file") offense, provided that circumstances alleged are found true
    - Any 707(b) list offense, provided that minor was 16 years of age or older at time of commission

Judicial Waiver (traditional "707" hearing) Provisions:

Section 707(a)(2) W&IC
Minor 16 years of age or older is *presumed unfit* for juvenile court treatment if the minor is alleged to have committed *any* felony, and:

- The minor has two or more prior felony findings for offenses committed when the minor was 14 years or older.

Section 707(b) W&IC
The list of offenses set forth in this section is expanded to include:
- All Robberies, including "strong arm" and *Estes* type.
- Voluntary Manslaughter
- Any offense described in Section 12022.53 PC

Section 707(c) W&IC

Assuming that minor is alleged to have committed a 707(b) list offense, the minimum age for transfer to court of criminal jurisdiction following motion and hearing pursuant to this section is lowered to *age 14*. The minor is presumed unfit for juvenile court treatment.

Please Note: An obvious drafting error exists in Section 707(b), which states, "Subdivision (c) shall be applicable in any case in which the minor... was 16 years of age or older...". This contradicts 707(c), which clearly states that the age of applicability of that section is 14 years of age or older. The clear legislative intent was to lower the age of applicability to 14, and we should proceed on that basis.

Applicability of Reverse Remand Provisions

Penal Code Sections 1170.17 and 1170.19, which became effective January 1, 2000, were enacted in conjunction with Section 602(b) W&IC as part of Senate Bill 334, which was a legislative preemptive "response" to Proposition 21. The provisions of Proposition 21 "chaptered out" the version of Section 602(b) which was effective between January 1 and March 7, 2000; however, Penal Code Sections 1170.17 and 1170.19 continue to be viable. Notably, the practical applicability of these sections will most likely be highly limited, based upon language contained in the sections themselves. Given that the reverse remand scheme set forth in Penal Code Sections 1170.17 and 1170.19 is still good law, the following is a summary of when reverse remand applies following the enactment of Proposition 21:

- Minor found unfit following a "707" motion and hearing in the juvenile court, convicted of <u>any</u> criminal offense in court of criminal jurisdiction:
  No reverse remand application; case stays in criminal court

- Case filed in court of criminal jurisdiction either pursuant to Section 602(b) W&IC (legislative waiver) or Section 707(d) W&IC (prosecutor direct file discretion), and minor convicted of <u>any</u> Section 602(b) or 707(d) eligible offense upon which the case could have been commenced in criminal court:
  No reverse remand application; case stays in criminal court

(Continued next page)

- Case filed in court of criminal jurisdiction either pursuant to Section 602(b) W&IC or Section 707(d) W&IC, minor convicted of offense for which minor (considering minor's age) would have been presumed "unfit" for juvenile court treatment if case commenced in juvenile court (and offense not within Section 602(b) or 707(d)):

  Minor may move for post-conviction fitness hearing, to be conducted in either the criminal court or the juvenile court; Minor presumed "unfit."

  - *If found "fit": Matter remanded to juvenile court for disposition (sentencing), unless minor requests adult sentencing (Penal Code Section 1170.19(b)(4)) and all parties, including the court, agree.*
  - *If found "unfit": Matter remains in criminal court for sentencing, unless all parties, including the court, agree to juvenile disposition (Penal Code Section 1170.19(a)(4).*

- Case filed in court of criminal jurisdiction either pursuant to Section 602(b) or Section 707(d) W&IC, minor convicted of offense for which minor (considering minor's age) would have been presumed "fit" for juvenile court treatment if case commenced in juvenile court (and offense not within Section 602(b) or 707(d):

  District Attorney may move for post-conviction fitness hearing, to be conducted in either the criminal court or the juvenile court; Minor presumed "fit." Sentencing procedures same as above, depending on finding of "fitness" or "unfitness."

- Case filed in court of criminal jurisdiction either pursuant to Section 602(b) or Section 707(d) W&IC, minor not convicted of any offense which, in combination with the minor's age at the time of commission, would have rendered the minor eligible for transfer to criminal court under any provision:

  Matter remanded to juvenile court for disposition, unless minor requests adult sentencing (Penal Code Section 1170.19(b)(4), and all parties, including the court, agree.

II. Deferred Entry of Judgment / Informal Probation

Prior to the effective date of Proposition 21, "informal probation" pursuant to Welfare and Institutions Code Section 654 *et seq.* was often granted to first-time juvenile felons, even for serious offenses such as residential burglary and strong-arm robbery. Such grants of informal probation under either Section 654 or 654.2 were limited by the provisions of Section 654.3 W&IC, which prohibited the granting of informal probation "except in unusual case(s) where the interests of justice would best be served and the court specifies on the record the reasons for its decision," when any of the following circumstances were present:

- Petition alleges 707(b),(d), or (e) enumerated offense(s)
- Petition alleges minor sold or possessed for sale a controlled substance
- Petition alleges 11377 H&S or 11350 H&S on campus, or 245.5 PC, 626.9 PC, or 626.10 PC
- Petition alleges violation of 186.22 PC
- Minor previously participated in 654 W&IC program
- Minor previously adjudged a 602 W&IC ward
- Petition alleges offense in which restitution owed to victim exceeds $1000.

Proposition 21 Changes

As of the effective date of Proposition 21, a new "deferred entry of judgment" procedure applies to minors 14 years of age or older who are first-time felons (W&IC Section 790 *et seq.)*, provided that *all* of the following circumstances apply:

1. Minor has not previously been declared ward for commission of felony
2. Offense charged is not 707(b) W&IC list offense
3. Minor not previously committed to CYA
4. Minor has never had probation revoked prior to completion
5. Minor is at least 14 years of age *at the time of the hearing*
6. Minor eligible for probation pursuant to Section 1203.06 PC (Section prohibits granting probation to persons who use firearm in commission of certain enumerated felonies, or who are personally armed with firearm during commission of felony or at time of arrest and have sustained prior conviction for certain enumerated felonies.)

Please Note: The court may still grant informal probation pursuant to Section 654 or 654.2, even if the minor otherwise falls within the deferred entry provisions of Section 790 *et seq.*, provided that the court determines that the case is unusual and the interests of justice would best be served by such a result. (Section 654.3 W&IC, as amended by Proposition 21)

Procedures:

1. D.A. file review and declaration regarding eligibility (Sections 790, 791 W&IC):

- Prosecutor, defense counsel, and court must all agree to procedure; upon agreement, D.A. shall review file to determine whether minor is eligible for deferred entry "as soon as possible after the initial filing of the petition."
  - If all parties do not agree, case shall proceed pursuant to Section 675 W&IC.
- If minor found eligible for deferred entry, D.A. shall file declaration or state for the record the grounds upon which determination based.
- Court may set hearing for deferred entry of judgment at the initial appearance under Section 657 W&IC (jurisdictional and/or detention hearing).
- Information to be made available to minor and minor's attorney
  - Notification to minor shall also include <u>*all*</u> of the following:
    - Full description of deferred entry procedures
    - General explanation of roles of probation, D.A., program, and court in deferred entry process
    - Clear statement that minor must *admit all allegations* and waive time for judgment; upon successful completion of probation, positive recommendation from probation department, and D.A. motion, court shall dismiss charges.
      - Dismissal shall be no sooner than 12 months, no later than 36 months from date of minor's referral to program.
    - Explanation regarding juvenile records related to deferred entry program, and the minor's rights related to answering questions about arrest and/or having participated in program (If successful completion, arrest deemed never to have occurred, records sealed.)
    - Statement that if minor fails program and judgment entered, offense may serve as a "prior" for future prosecutor "direct file" purposes pursuant to Section 707(d) W&IC.

2. Grant of Deferred Entry (Section 791(b) W&IC):

- Assuming above procedures completed, court may *either:*
  - Summarily grant deferred entry; or,
  - Refer to probation department for investigation, recommendation, and determination which programs will accept minor.

Please Note: *Court* shall make final determination regarding education, treatment, and rehabilitation of minor.

- Court *must* impose 4th Amendment waiver as condition of probation; *shall* require minor to demonstrate curfew compliance and school attendance; *shall* consider imposing drug/alcohol testing term. (Section 794 W&IC)

- Minor's admission of charges not a finding petition sustained unless judgment actually entered. (Section 791(c) W&IC)

3. Citation to Parent/Guardian (Section 792 W&IC):

- Directs parent/guardian to bring minor to hearing on deferred entry
- Notice that parent/guardian may be required to participate in program with minor
- Explains provisions of Section 170.6 CCP

Please Note: Personal service of the citation must be made at least 24 hours before the time of the court appearance.

4. Failure to Comply with Program (Section 793 W&IC):

- Appears to D.A., court, *or* probation department that minor not complying or not benefitting:
  - Court *shall* lift deferred entry and schedule dispositional hearing.

- After grant of deferred entry, minor convicted or adjudicated for commission of felony, *or* two misdemeanors committed on separate occasions:
  - Court *shall* lift deferred entry and schedule dispositional hearing.

- After grant of deferred entry, minor convicted or adjudicated for commission of one misdemeanor, or multiple misdemeanors committed in single incident:
  - Court *may* lift deferred entry and schedule dispositional hearing.

5. Successful Completion (Section 794 W&IC):

- Charges dismissed
- Arrest deemed never to have occurred
- Records sealed (Except to D.A. and probation department, for purpose of future determination of eligibility for deferred entry of judgment.)

III. Failures / Violations of Probation

A "supplemental petition" pursuant to Section 777(a) W&IC has been the vehicle by which the prosecutor and/or the probation department have sought to impose a more restrictive disposition on a minor because "the previous disposition has not been effective in the rehabilitation or protection of the minor." Such petitions were subject to demurrer on bases such as lack of specificity and failure to allege the ineffectiveness of the prior disposition; further, because the petition "supplemented" a 602 W&IC petition, the minor was entitled to a full contested hearing on the issues. Proof was required to be "beyond a reasonable doubt," and, unlike adult probation violation hearings, reliable hearsay was not admissible. The only practical way to avoid these cumbersome requirements was to request the court to stay up to 30 days of *Ricardo M.* (juvenile hall) time pursuant to Section 777(e) at the time of disposition on a 602 W&IC petition; the court could impose this time after a hearing without the necessity of a supplemental petition being found or proof of ineffectiveness of the previous disposition. Any more restrictive disposition, however, such as commitment to a county facility or CYA, required full procedure compliance.

Proposition 21 Changes

While Section 777 W&IC still applies to violations or failures of probation, the procedures for modifying a prior dispositional order are now similar to those governing adult probation violations. The term "supplemental petition" *no longer exists*. Instead, the following procedures apply:

- Proceedings are initiated by a "notice of hearing"
  - If minor is a 602 W&IC ward, notice may be made by *either* the D.A. or the probation officer.
  - If basis is violation of condition of probation not amounting to a crime, concise summary of facts supporting conclusion must be given.
- Burden of proof is "preponderance of the evidence"
- Reliable hearsay is admissible, to same extent as it would be admissible in adult probation violation hearing.
- Section 777(e) W&IC (stayed *Ricardo M.* time up to 30 days) is *deleted.*

Please Note: In the matter of *In re Arthur N. (1976) 16 Cal. 3d 226,* the California Supreme Court reasoned that because a 777(a) W&IC petition "supplemented" a 602 W&IC petition, the standard of proof at a hearing on a Section 777(a) petition must necessarily be beyond a reasonable doubt. While the amendments to Section 777 made by Proposition 21, including the deletion of the "supplemental petition" language, would appear to override this reasoning, *Arthur N.* has not yet been overruled.

IV. Miscellaneous Provisions Modified by Proposition 21

Arrest Warrants:

Sections 660 & 663 W&IC
In cases where the whereabouts of the minor are unknown, it is *no longer necessary* to make "a showing that all reasonable efforts to locate the minor have failed or that the minor has willfully evaded service of process."

Please Note: In order to avoid the "notice" requirements of Section 660, if the whereabouts of the minor are unknown, the arrest warrant declaration should include a simple statement to that effect.

Confidentiality / Juvenile Records:

Section 781 W&IC
Court *prohibited* from sealing records of any person who was found to have committed a 707(b) W&IC list offense when he or she had attained 14 years of age or older.

Section 827.2 W&IC
Law enforcement may release to the public or any interested person information regarding a minor 14 years of age or older having been found to have committed a 707(b) W&IC list felony.

- Court may prohibit release only with finding of good cause *and* written statement of reasons.

Section 827.5 W&IC
Law enforcement may disclose name of minor 14 years of age or older taken into custody for commission of 1192.7(c) PC serious felony following the minors *arrest.* No longer any need for a 602 W&IC hearing to have commenced.

Section 827.6 W&IC
Law enforcement may release name, alleged offense, and descriptive information about minor *of any age* alleged to have committed a 667.5(c) PC violent offense *and* against whom an arrest warrant is outstanding, if release of the information would assist in the apprehension of the minor or the protection of public safety.

Criminal Database:

Section 602.5 W&IC
Juvenile court must report to DOJ the *complete* criminal history of any minor found to be a ward because of the commission of *any* felony offense.

Public Access to Juvenile Court Proceedings:

Section 676 W&IC

- Any offense described in Penal Code Section 12022.53 added to list of offenses for which juvenile hearings are open to the public.
- Name of minor alleged to have committed 676(a) W&IC list offense shall not be confidential unless court so orders for "good cause." Good cause limited to protecting the personal safety of the minor, a victim, or a member of the public. Court must make *written finding on the record.*
- Disclosure of juvenile court records or files concerning minor who commits 676(a) W&IC list offense shall not be prohibited on basis of "benefit of the minor" unless court makes *written finding* that the reason for the prohibition is to protect the *safety* of the minor.
- Juvenile court must post in conspicuous place a *daily written calendar* of hearings which are open to the public.

Release of In-Custody Minors:

Section 625.3 W&IC
Minor 14 years of age or older *cannot be released* from custody until brought before a judicial officer (detention hearing) if minor taken into custody for commission of:

- Personal use of firearm in commission/attempted commission of any felony; or,
- Any 707(b) W&IC list offense

Section 629 W&IC
Minor 14 years of age or older taken into custody for commission/attempted commission of *any felony* shall not be released until minor and/or parent, guardian, or relative have *either:*

- Signed *written promise to appear* before probation officer at specified time; or,
- Have been given an *order to appear* before the juvenile court on a date certain.

V. List of Existing W&IC Sections Superseded by Provisions of Proposition 21

As noted above, the provisions of Senate Bill 334, which became effective January 1, 2000, modified a number of sections contained in the Welfare and Institutions Code. The provisions of Proposition 21 modify and supersede a number of those same W&IC sections, by virtue of "chaptering out." The Welfare and Institutions Code sections so affected are as follows:

- Section 602(b)
- Section 602.5
- Section 629
- Section 676
- Section 827.1 (also involving Sections 827.2 and 827.7)
- Section 827.5
- Section 827.6

If a prosecutor is faced with issues involving any of the above sections, he or she should ensure that the statute *effective March 8, 2000* is applied, as opposed to the version which became effective January 1, 2000, as the result of SB 334.