

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

- Requires notification to victim and opportunity for input during phases of criminal justice process, including bail, pleas, sentencing and parole.
- Establishes victim safety as consideration in determining bail or release on parole.
- Increases the number of people permitted to attend and testify on behalf of victims at parole hearings.
- Reduces the number of parole hearings to which prisoners are entitled.
- Requires that victims receive written notification of their constitutional rights.
- Establishes timelines and procedures concerning parole revocation hearings.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Potential loss of future state savings on prison operations and potential increased county jail operating costs that could collectively amount to hundreds of millions of dollars annually, due to restricting the early release of inmates to reduce facility overcrowding.
- Net savings in the low tens of millions of dollars annually for the administration of parole hearings and revocations, unless the changes in parole revocation procedures were found to conflict with federal legal requirements.

ANALYSIS BY THE LEGISLATIVE ANALYST**OVERVIEW OF PROPOSAL**

This measure amends the State Constitution and various state laws to (1) expand the legal rights of crime victims and the payment of restitution by criminal offenders, (2) restrict the early release of inmates, and (3) change the procedures for granting and revoking parole. These changes are discussed in more detail below.

EXPANSION OF THE LEGAL RIGHTS OF CRIME VICTIMS AND RESTITUTION**Background**

In June 1982, California voters approved Proposition 8, known as the "Victims' Bill of Rights." Among other changes, the proposition amended the Constitution and various state laws to grant crime victims the right to be notified of, to attend, and to state their views at, sentencing and parole hearings. Other separately enacted laws have created other rights for crime victims, including the opportunity for a victim to obtain a judicial order of protection from harassment by a criminal defendant.

Proposition 8 established the right of crime victims to obtain restitution from any person who committed the crime that caused them to suffer a loss. Restitution

often involves replacement of stolen or damaged property or reimbursement of costs that the victim incurred as a result of the crime. A court is required under current state law to order full restitution unless it finds compelling and extraordinary reasons not to do so. Sometimes, however, judges do not order restitution. Proposition 8 also established a right to "safe, secure and peaceful" schools for students and staff of primary, elementary, junior high, and senior high schools.

Changes Made by This Measure

Restitution. This measure requires that, without exception, restitution be ordered from offenders who have been convicted, in every case in which a victim suffers a loss. The measure also requires that any funds collected by a court or law enforcement agencies from a person ordered to pay restitution would go to pay that restitution first, in effect prioritizing those payments over other fines and obligations an offender may legally owe.

Notification and Participation of Victims in Criminal Justice Proceedings. As noted above, Proposition 8 established a legal right for crime victims to be notified of, to attend, and to state their views at, sentencing and parole hearings. This measure expands these legal rights to include all public criminal

proceedings, including the release from custody of offenders after their arrest, but before trial. In addition, victims would be given the constitutional right to participate in other aspects of the criminal justice process, such as conferring with prosecutors on the charges filed. Also, law enforcement and criminal prosecution agencies would be required to provide victims with specified information, including details on victim's rights.

Other Expansions of Victims' Legal Rights. This measure expands the legal rights of crime victims in various other ways, including the following:

- Crime victims and their families would have a state constitutional right to (1) prevent the release of certain of their confidential information or records to criminal defendants, (2) refuse to be interviewed or provide pretrial testimony or other evidence requested in behalf of a criminal defendant, (3) protection from harm from individuals accused of committing crimes against them, (4) the return of property no longer needed as evidence in criminal proceedings, and (5) "finality" in criminal proceedings in which they are involved. Some of these rights now exist in statute.
- The Constitution would be changed to specify that the safety of a crime victim must be taken into consideration by judges in setting bail for persons arrested for crimes.
- The measure would state that the right to safe schools includes community colleges, colleges, and universities.

RESTRICTIONS ON EARLY RELEASE OF INMATES

Background

The state operates 33 state prisons and other facilities that had a combined adult inmate population of about 171,000 as of May 2008. The costs to operate the California Department of Corrections and Rehabilitation (CDCR) in 2008–09 are estimated to be approximately \$10 billion. The average annual cost to incarcerate an inmate is estimated to be about \$46,000. The state prison system is currently experiencing overcrowding because there are not enough permanent beds available for all inmates. As a result, gymnasiums and other rooms in state prisons have been converted to house some inmates.

Both the state Legislature and the courts have been considering various proposals that would reduce

overcrowding, including the early release of inmates from state prison. At the time this analysis was prepared, none of these proposals had been adopted. State prison populations are also affected by credits granted to prisoners. These credits, which can be awarded for good behavior or participation in specific programs, reduce the amount of time a prisoner must serve before release.

Collectively, the state's 58 counties spend over \$2.4 billion on county jails, which have a population in excess of 80,000. There are currently 20 counties where an inmate population cap has been imposed by the federal courts and an additional 12 counties with a self-imposed population cap. In counties with such population caps, inmates are sometimes released early to comply with the limit imposed by the cap. However, some sheriffs also use alternative methods of reducing jail populations, such as confining inmates to home detention with Global Positioning System (GPS) devices.

Changes Made by This Measure

This measure amends the Constitution to require that criminal sentences imposed by the courts be carried out in compliance with the courts' sentencing orders and that such sentences shall not be "substantially diminished" by early release policies to alleviate overcrowding in prison or jail facilities. The measure directs that sufficient funding be provided by the Legislature or county boards of supervisors to house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

CHANGES AFFECTING THE GRANTING AND REVOCATION OF PAROLE

Background

The Board of Parole Hearings conducts two different types of proceedings relating to parole. First, before CDCR releases an individual who has been sentenced to life in prison with the possibility of parole, the inmate must go before the board for a parole consideration hearing. Second, the board has authority to return to state prison for up to a year an individual who has been released on parole but who subsequently commits a parole violation. (Such a process is referred to as parole revocation.) A federal court order requires the state to provide legal counsel to parolees, including assistance at hearings related to parole revocation charges.

Changes Made by This Measure

Parole Consideration Procedures for Lifers. This measure changes the procedures to be followed by the board when it considers the release from prison of inmates with a life sentence. Specifically:

- Currently, individuals whom the board does not release following their parole consideration hearing must generally wait between one and five years for another parole consideration hearing. This measure would extend the time before the next hearing to between 3 and 15 years, as determined by the board. However, inmates would be able to periodically request that the board advance the hearing date.
- Crime victims would be eligible to receive earlier notification in advance of parole consideration hearings. They would receive 90 days advance notice, instead of the current 30 days.
- Currently, victims are able to attend and testify at parole consideration hearings with either their next of kin and up to two members of their immediate family, or two representatives. The measure would remove the limit on the number of family members who could attend and testify at the hearing, and would allow victim representatives to attend and testify at the hearing without regard to whether members of the victim's family were present.
- Those in attendance at parole consideration hearings would be eligible to receive a transcript of the proceedings.

General Parole Revocation Procedures. This measure changes the board's parole revocation procedures for offenders after they have been paroled from prison. Under a federal court order in a case known as *Valdivia v. Schwarzenegger*, parolees are entitled to a hearing within 10 business days after being charged with violation of their parole to determine if there is probable cause to detain them until their revocation charges are resolved. The measure extends the deadline for this hearing to 15 days. The same court order also requires that parolees arrested for parole violations have a hearing to resolve the revocation charges within 35 days. This measure extends this timeline to 45 days. The measure also provides for the appointment of legal counsel to parolees facing revocation charges only if the board determines, on a case-by-case basis, that the parolee

is indigent and that, because of the complexity of the matter or because of the parolee's mental or educational incapacity, the parolee appears incapable of speaking effectively in his or her defense. Because this measure does not provide for counsel at all parole revocation hearings, and because the measure does not provide counsel for parolees who are not indigent, it may conflict with the *Valdivia* court order, which requires that all parolees be provided legal counsel.

FISCAL EFFECTS

Our analysis indicates that the measure would result in: (1) state and county fiscal impacts due to restrictions on early release, (2) potential net state savings from changes in parole board procedures, and (3) changes in restitution funding and other fiscal impacts. The fiscal estimates discussed below could change due to pending federal court litigation or budget actions.

State and County Fiscal Impacts of Early Release Restrictions

As noted above, this measure requires that criminal sentences imposed by the courts be carried out without being substantially reduced by early releases in order to address overcrowding. This provision could have a significant fiscal impact on both the state and counties depending upon the circumstances related to early release and how this provision is interpreted by the courts.

State Prison. The state does not now generally release inmates early from prison. Thus, under current law, the measure would probably have no fiscal effect on the state prison system. However, the measure could have a significant fiscal effect in the future in the event that it prevented the Legislature or the voters from enacting a statutory early release program to address prison overcrowding problems. Under such circumstances, this provision of the measure could prevent early release of inmates, thereby resulting in the loss of state savings on prison operations that might otherwise amount to hundreds of millions of dollars annually.

County Jails. As mentioned above, early releases of jail inmates now occur in a number of counties, primarily in response to inmate population limits imposed on county jail facilities by federal courts. Given these actions by the federal courts, it is not clear how, and to what extent, the enactment of

such a state constitutional measure would affect jail operations and related expenditures in these counties. For example, it is possible that a county may comply with a population cap by expanding its use of GPS home monitoring or by decreasing the use of pretrial detention of suspects, rather than by releasing inmates early. In other counties not subject to federal court-ordered population caps, the measure's restrictions on early release of inmates could affect jail operations and related costs, depending upon the circumstances related to early release and how this provision was interpreted by the courts. Thus, the overall cost of this provision for counties is unknown.

Potential Net State Savings From Changes in Parole Board Procedures

The provisions of this measure that reduce the number of parole hearings received by inmates serving life terms would likely result in state savings amounting to millions of dollars annually. Additional savings in the low tens of millions of dollars annually could result from the provisions changing parole revocation procedures, such as by limiting when counsel would be provided by the state. However, some of these changes may run counter to the federal *Valdivia* court order related to parole revocations and therefore could be subject to legal challenges, potentially eliminating these savings. In addition, both the provisions related to parole consideration and revocation could ultimately increase state costs to the extent that they result in additional offenders being held in state prison longer than they would otherwise. Thus, the overall fiscal effect from these changes in parole revocation procedures is likely to be net state savings in the low tens of millions of dollars annually unless the changes in the process were found to conflict with federal legal requirements contained in the *Valdivia* court order.

Changes in Restitution Funding and Other Fiscal Impacts

Restitution Funding. The changes to the restitution process contained in this measure could affect state and local programs. Currently, a number of different state and local agencies receive funding from the fines and penalties collected from criminal offenders. For example, revenues collected from offenders go to counties' general funds, the state Fish and Game Preservation Fund for support of a variety of wildlife conservation programs, the Traumatic Brain Injury Fund to help adults recover from brain injuries, and the Restitution Fund for support of crime victim programs. Because this initiative requires that all monies collected from a defendant first be applied to pay restitution orders directly to the victim, it is possible that the payments of fine and penalty revenues to various funds, including the Restitution Fund, could decline.

However, any loss of Restitution Fund revenues may be offset to the extent that certain provisions of this initiative increase the amount of restitution received directly by victims, thereby reducing their reliance on assistance from the Restitution Fund. Similarly, this initiative may also generate some savings for state and local agencies to the extent that increases in payments of restitution to crime victims cause them to need less assistance from other state and local government programs, such as health and social services programs.

Legal Rights of Criminal Victims. Because the measure gives crime victims and their families and representatives a greater opportunity to participate in and receive notification of criminal justice proceedings, state and local agencies could incur additional administrative costs. Specifically, these costs could result from lengthier court and parole consideration proceedings and additional notification of victims by state and local agencies about these proceedings.

The net fiscal impact of these changes in restitution funding and legal rights of criminal victims on the state and local agencies is unknown.

★ **ARGUMENT IN FAVOR OF PROPOSITION 9** ★

No pain is worse than losing a child or a loved one to murder . . . EXCEPT WHEN THE PAIN IS MAGNIFIED BY A SYSTEM THAT PUTS CRIMINALS' RIGHTS AHEAD OF THE RIGHTS OF INNOCENT VICTIMS.

The pain is real. It's also unnecessary to victims and costly to taxpayers.

Marsy Nicholas was a 21-year-old college student at UC Santa Barbara studying to become a teacher for disabled children. Her boyfriend ended her promising life with a shotgun blast at close range. Due to a broken system, the pain of losing Marsy was just the beginning.

Marsy's mother, Marcella, and family were grieving, experiencing pain unlike anything they'd ever felt. The only comfort was the fact Marsy's murderer was arrested.

Imagine Marcella's agony when she came face-to-face with Marsy's killer days later . . . at the grocery store!

How could he be free? He'd just killed Marcella's little girl. This can't be happening, she thought. Marsy's killer was free on bail but her family wasn't even notified. He could've easily killed again.

CALIFORNIA'S CONSTITUTION GUARANTEES RIGHTS FOR RAPISTS, MURDERERS, CHILD MOLESTERS, AND DANGEROUS CRIMINALS.

PROPOSITION 9 LEVELS THE PLAYING FIELD, GUARANTEEING CRIME VICTIMS THE RIGHT TO JUSTICE AND DUE PROCESS, ending further victimization of innocent people by a system that frequently neglects, ignores, and forever punishes them.

Proposition 9 creates California's Crime Victims' Bill of Rights to:

- **REQUIRE THAT A VICTIM AND THEIR FAMILY'S SAFETY MUST BE CONSIDERED BY JUDGES MAKING BAIL DECISIONS FOR ACCUSED CRIMINALS.**
- Mandate that crime victims be notified if their offender is released.
- **REQUIRE VICTIMS BE NOTIFIED OF PAROLE HEARINGS IN ADVANCE TO ENSURE THEY CAN ATTEND AND HAVE A RIGHT TO BE HEARD.**

- Require that victims be notified and allowed to participate in critical proceedings related to the crime, including bail, plea bargain, sentencing, and parole hearings.
- Give victims a constitutional right to prevent release of their personal confidential information or records to criminal defendants.

During these difficult budget times, **PROP. 9 PROTECTS TAXPAYERS.**

Currently, taxpayers spend millions on hearings for dangerous criminals that have virtually no chance of release. "Helter Skelter" inmates Bruce Davis and Leslie Van Houten, followers of Charles Manson, convicted of multiple brutal murders, have had 38 parole hearings in 30 years. That's 38 times the families involved have been forced to relive the painful crime and pay their own expenses to attend the hearing, plus 38 hearings that taxpayers have had to subsidize.

Prop. 9 allows parole judges to increase the number of years between parole hearings. **CALIFORNIA'S NONPARTISAN LEGISLATIVE ANALYST SAID IT ACHIEVES, "POTENTIAL NET SAVINGS IN THE LOW TENS OF MILLIONS OF DOLLARS . . ."**

PROP. 9 ALSO PREVENTS POLITICIANS FROM RELEASING DANGEROUS INMATES TO ALLEVIATE PRISON OVERCROWDING.

Prop. 9 respects victims, protects taxpayers, and makes California safer. It's endorsed by public safety leaders, victims' advocates, taxpayers, and working families.

PROP. 9 IS ABOUT FAIRNESS FOR LAW ABIDING CITIZENS. They deserve rights equal to those of criminals.

ON BEHALF OF ALL CURRENT AND FUTURE CRIME VICTIMS, PLEASE VOTE YES ON 9!

MARCELLA M. LEACH, Co-Founder

Justice for Homicide Victims

LAWANDA HAWKINS, Founder

Justice for Murdered Children

DAN LEVEY, National President

The National Organization of Parents of Murdered Children

★ **REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 9** ★

Our hearts go out to the victims of violent crime and their families. Prop. 9 was put on the ballot by one such family whose family member was killed 25 years ago. But Prop. 9 is unnecessary and will cost taxpayers millions of dollars.

During the past 25 years many fundamental changes have been made to our criminal justice laws such as the "Three Strikes Law," and the "Victims' Bill of Rights" which placed victims' rights into the Constitution.

Under current law victims have the right to be notified if their offender is released, to receive advance notice of criminal proceedings, and to participate in parole hearings and sentencing. There's already a state-funded Victims of Crime Resource Center to educate victims about their rights and help them through the process.

That's why Prop. 9 is a horrible drain on taxpayers during the height of a budget crisis. It's why the independent Legislative

Analyst said it could cost "hundreds of millions of dollars annually."

Instead of streamlining government, Prop. 9 creates serious duplication of existing laws. It places pages of complex law into our Constitution. And once in the Constitution, if the laws don't work, and need to be changed or modernized in any way, it could require a ¾ vote of the Legislature. That's a threshold even higher than required to pass the state budget!

Vote NO on Prop. 9.

JEANNE WOODFORD, Former Warden

San Quentin State Prison

REV. JOHN FREESEMAN, Board President

California Church IMPACT

★ **ARGUMENT AGAINST PROPOSITION 9** ★

Aren't you getting tired of one individual paying millions to put some idea, however well-meaning, on the ballot that ends up costing taxpayers billions?

Prop. 9 is the poster child for this, bought and paid for by one man—Henry Nicholas III.

Prop. 9 is a misleading proposition that exploits Californians' concern for crime victims. It preys on our emotions in order to rewrite the State Constitution and change the way California manages its prisons and jails, threatening to worsen our overcrowding crises, at both the state and local level.

Prop. 9 is a costly, unnecessary initiative. In fact, many of the components in Prop. 9—including the requirements that victims be notified of critical points in an offender's legal process as well as the rights for victims to be heard throughout the legal process—were already approved by voters in Prop. 8 in 1982, the Victims' Bill of Rights.

That's why Prop. 9 is truly unnecessary and an expensive duplication of effort. According to the *Appeal Democrat* newspaper, "this initiative is about little more than political grandstanding," ("Our View: Tough talk on crime just hot air," 3/1/08).

Voters sometimes don't realize that there is no mechanism for initiatives to be legally reviewed for duplication of current law. So, sometimes if it seems like a way to get something passed, the writers include current law in their initiatives. That's clearly what has been done in Prop. 9.

Californians are understandably concerned about safety and sympathetic to crime victims. Some of the provisions seem reasonable. Yet they hardly require an initiative to accomplish

them. For instance, passage of Prop. 9 would require law enforcement to give victims a "Marsy's Law" card spelling out their rights. Does the state really need to put this in the State Constitution? And at what cost?

Prop. 9 promises to stop the early release of criminals. The nonpartisan Legislative Analyst's Office says this could potentially "amount to hundreds of millions of dollars annually." The Legislative Analyst also points out that "the state does not now generally release inmates early from prison."

California's parole system is already among the most strict in the United States. The actual annual parole rate for those convicted of second degree murder or manslaughter has been less than 1% of those eligible for 20 years! So, the need for these tremendously costly changes to existing parole policy is unjustified given the costs involved.

Further, anything approved in Prop. 9 regarding prisoners and parole is subject to federal legal challenges. So, the likelihood that Prop. 9 would have any impact at all is negligible at best.

Taking money out of an already cash-strapped state budget to pay for an unnecessary initiative could mean cuts to every other priority of Government, including education, healthcare, and services for the poor and elderly.

Vote No on Prop. 9. It's unnecessary. It's expensive. It's bad law.

SHEILA A. BEDI, Executive Director
Justice Policy Institute

ALLAN BREED, Former Director
California Department of Corrections

★ **REBUTTAL TO ARGUMENT AGAINST PROPOSITION 9** ★

It's sad when special interests resort to personal attacks against crime victims and their families.

MAKE NO MISTAKE: TODAY, IN CALIFORNIA, INNOCENT VICTIMS ARE BEING PUNISHED BY A BROKEN SYSTEM.

Here are two examples, among thousands:

Anna Del Rio, whose daughter was executed by a "shooter for gangs," was intimidated by gang members—in court—and NOT ALLOWED TO SPEAK or wear a picture of her daughter.

Marguerite Hemphill left her paralyzed husband's bedside to attend the parole hearing for her daughter's killer. After driving 300 miles, she learned the hearing was postponed. **HEMPHILL WASN'T NOTIFIED AND HAS NO RECOURSE . . .** she must repeat the trip again.

If victims already have rights, why does this happen?

MURDERERS, RAPISTS, AND CHILD MOLESTERS HAVE RIGHTS GUARANTEED BY THE CALIFORNIA CONSTITUTION. CRIME VICTIMS AND THEIR FAMILIES HAVE NO SIMILAR CONSTITUTIONAL RIGHTS.

PROPOSITION 9 RESTORES JUSTICE, DUE PROCESS, HUMAN DIGNITY, AND FAIRNESS. It makes convicted

criminals pay their debt to society by prohibiting politicians from releasing criminals just to reduce prison populations.

Crime Victims United of California, Justice for Homicide Victims, Justice for Murdered Children, Memory of Victims Everywhere, National Organization of Parents of Murdered Children, police chiefs, sheriffs, and district attorneys say **VOTE YES.**

TRUST CALIFORNIANS: 1.2 MILLION PEOPLE, DEMOCRATS AND REPUBLICANS, PUT PROP. 9 ON THE BALLOT. IT CAN SAVE TAXPAYERS TENS OF MILLIONS according to the nonpartisan Legislative Analyst. More importantly, Prop. 9 can save lives.

Remember the pain endured by victims Anna Del Rio and Marguerite Hemphill. Please vote YES.

MARCELLA LEACH, Co-Founder
Justice for Homicide Victims

HARRIET SALARNO, President
Crime Victims United of California

MARK LUNSFORD, Creator
Jessica's Law: Sexual Predator Punishment and Control Act of 2006