

16 SEP 29 PM 4:58

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB AND COUNCIL PRESIDENT
LYNETTE GIBSON MCELHANEY

**RESOLUTION IN SUPPORT OF CALIFORNIA PROPOSITION 57 THAT
WOULD INCREASE PAROLE AND GOOD BEHAVIOR
OPPORTUNITIES FOR FELONS CONVICTED OF NONVIOLENT
CRIMES AND ALLOW JUDGES INSTEAD OF PROSECUTORS TO
DECIDE WHETHER TO TRY CERTAIN JUVENILES AS ADULTS IN
COURT**

WHEREAS, There have been significant problems in the United States and California with excessive and lengthy incarcerations for nonviolent offenses, especially for men of color; and

WHEREAS, Over the last several decades, California's prison population exploded by 500% and prison spending ballooned to more than \$10 billion every year; and

WHEREAS, Prison numbers dropped after California voters approved Proposition 47 in 2014, which reduced non-violent, non-serious crimes to misdemeanors and gave more inmates a higher chance for parole consideration; and

WHEREAS, California Proposition 57 is partly another response to the 2009 federal order mandating that California reduce its prison population numbers; and

WHEREAS, California Proposition 57 would increase parole chances for felons convicted of non-violent crimes and give them more opportunities to earn credits for good behavior, as well as allow judges, not prosecutors, to decide whether to try certain juveniles as adults in court; and

WHEREAS, As of the beginning of 2016, there were about 25,000 nonviolent state felons that could seek early release and parole under Proposition 57; and

WHEREAS, Proposition 57 would likely net state savings of tens of millions of dollars annually; and

WHEREAS, Evidence shows that inmate rehabilitation reduces the likelihood of reoffending and minors who remain under juvenile court supervision are less likely to commit new crimes; and

WHEREAS, Proposition 57 is supported by Governor Jerry Brown, Senator Loni Hancock and many organizations; now, therefore, be it

RESOLVED: That the Oakland City Council hereby supports the passage of Proposition 57.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

16 SEP 22 PM 4:30



Councilmembers Dan Kalb & Lynette Gibson McElhaney

CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: City Council

From: Councilmember Dan Kalb

Date: September 22, 2016

Subject: Resolution in Support of Prop 57 (Felons Convicted of Non-Violent Crimes)

Colleagues on the City Council and Members of the Public,

With our introduction of a Resolution in Support of Proposition 57, we are submitting the attached the official argument in favor, the analysis by the state legislative analyst, and the full text of the proposition.

Respectfully submitted,

Dan Kalb, Councilmember

Lynette Gibson McElhaney, Council President

ARGUMENT IN FAVOR OF PROPOSITION 57

VOTE YES on PROPOSITION 57

California public safety leaders and victims of crime support Proposition 57—the Public Safety and Rehabilitation Act of 2016—because Prop. 57 focuses resources on keeping dangerous criminals behind bars, while rehabilitating juvenile and adult inmates and saving tens of millions of taxpayer dollars.

Over the last several decades, California's prison population exploded by 500% and prison spending ballooned to more than \$10 billion every year. Meanwhile, too few inmates were rehabilitated and most re-offended after release.

Overcrowded and unconstitutional conditions led the U.S. Supreme Court to order the state to reduce its prison population. Now, without a common sense, long-term solution, we will continue to waste billions and risk a court-ordered release of dangerous prisoners. This is an unacceptable outcome that puts Californians in danger—and this is why we need Prop. 57.

Prop. 57 is straightforward—here's what it does:

- Saves taxpayer dollars by reducing wasteful spending on prisons.
- Keeps the most dangerous offenders locked up.
- Allows parole consideration for people with non-violent convictions who complete the full prison term for their primary offense.
- Authorizes a system of credits that can be earned for rehabilitation, good behavior and education milestones or taken away for bad behavior.
- Requires the Secretary of the Department of Corrections and Rehabilitation to certify that these policies are consistent with protecting and enhancing public safety.
- Requires judges instead of prosecutors to decide whether minors should be prosecuted as adults, emphasizing rehabilitation for minors in the juvenile system.

We know what works. Evidence shows that the more inmates are rehabilitated, the less likely they are to re-offend. Further evidence shows that minors who remain under juvenile court supervision are less likely to commit new crimes. Prop. 57 focuses on evidence-based rehabilitation and allows a juvenile court judge to decide whether or not a minor should be prosecuted as an adult.

No one is automatically released, or entitled to release from prison, under Prop. 57.

- To be granted parole, all inmates, current and future, must demonstrate that they are rehabilitated and do not pose a danger to the public.
- The Board of Parole Hearings—made up mostly of law enforcement officials—determines who is eligible for release.
- Any individuals approved for release will be subject to mandatory supervision by law enforcement.

And as the California Supreme Court clearly stated: parole eligibility in Prop. 57 applies *"only to prisoners convicted of non-violent felonies."*

Prop. 57 is long overdue.

Prop. 57 focuses our system on evidence-based rehabilitation for juveniles and adults because it is better for public safety than our current system.

Prop. 57 saves tens of millions of taxpayer dollars.

Prop. 57 keeps the most dangerous criminals behind bars.

VOTE YES on Prop. 57

www.Vote4Prop57.com

EDMUND G. BROWN JR., Governor of California

MARK BONINI, President

Chief Probation Officers of California

DIONNE WILSON, widow of police officer killed in the line of duty

PROP 57 CRIMINAL SENTENCES. PAROLE. JUVENILE CRIMINAL PROCEEDINGS AND SENTENCING. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Adult Offenders

The California Department of Corrections and Rehabilitation (CDCR) operates the state prison system. CDCR is responsible for housing adults who have been convicted of felonies identified in state law as serious or violent, as well as certain sex offenses. Examples of violent felonies include murder, robbery, and rape. Examples of serious felonies include certain forms of assault, such as assault with the intent to commit robbery. The department is also responsible for housing individuals convicted of other felonies (such as grand theft) in cases where those individuals have been previously convicted of serious, violent, or certain sex offenses. As of June 2016, there were about 128,000 individuals in state prison. Below, we discuss the sentencing of adult offenders and the use of parole consideration hearings and sentencing credits.

Adult Sentencing. Individuals are placed in prison under an indeterminate sentence or a determinate sentence. Under indeterminate sentencing, individuals are sentenced to prison for a term that includes a minimum but no specific maximum, such as 25-years-to-life. Under determinate sentencing, individuals receive fixed prison terms with a specified release date. Most people in state prison have received a determinate sentence.

Individuals in prison have been convicted of a main or primary offense. They often serve additional time due to other, lesser crimes for which they are convicted at the same time. In addition, state law includes various sentencing enhancements that can increase the amount of time individuals serve. For example, those previously convicted of a serious or violent offense generally must serve twice the term for any new felony offense.

Parole Consideration Hearings. After an individual serves the minimum number of years required for an indeterminate sentence, the state Board of Parole Hearings (BPH) conducts a parole consideration hearing to determine whether the individual is ready to be released from prison. For example, BPH would conduct such a hearing for an individual sentenced to 25-years-to-life after the individual served 25 years in prison. If BPH decides not to release the individual from prison, the board would conduct a subsequent hearing in the future. Individuals who receive a determinate sentence do not need a parole consideration hearing to be released from prison at the end of their sentence. However, some of these individuals currently are eligible for parole consideration hearings before they have served their entire sentence. For example, certain individuals who have not been convicted of violent felonies are currently eligible for parole consideration after they have served half of their prison sentence. This was one of several measures put in place by a federal court to reduce the state's prison population.

Sentencing Credits. State law currently allows CDCR to award credits under certain conditions to prison inmates that reduce the time they must serve in prison. The credits are provided for good behavior or for participating in work, training, or education programs. Over two-thirds of inmates are eligible to receive credits. State law limits the amount that inmate sentences can be reduced through credits. For example, more than half of inmates eligible for credits can only reduce their sentences by 15 percent because they have a conviction for a violent offense.

Juvenile Justice

Youths accused of committing crimes when they were under 18 years of age are generally tried in juvenile court. However, under certain circumstances, they can be tried in adult court. Below, we discuss the process for determining whether a youth is tried in juvenile court versus adult court.

Youths in Juvenile Court. Juvenile court proceedings are different than adult court proceedings. For example, juvenile court judges do not sentence a youth to a set term in prison or jail. Instead, the judge determines the appropriate placement and rehabilitative treatment (such as drug treatment) for the youth, based on factors such as the youth's offense and criminal history. About 44,000 youths were tried in juvenile court in 2015.

Counties are generally responsible for the youths placed by juvenile courts. Some of these youths are placed in county juvenile facilities. However, if the judge finds that the youth committed certain significant crimes listed in statute (such as murder, robbery, and certain sex offenses), the judge can place the youth in a state juvenile facility. State law requires that

counties generally pay a portion of the cost of housing youths in these state facilities. Youths who are released from a state juvenile facility are generally supervised in the community by county probation officers.

Youths in Adult Court. In certain circumstances, youths accused of committing crimes when they were age 14 or older can be tried in adult court and receive adult sentences. (Individuals accused of committing crimes before they were age 14 must have their cases heard in juvenile court.) Such cases can be sent to adult court in one of the three following ways:

- **Automatically Based on Seriousness of Crime.** If a youth is accused of committing murder or specific sex offenses with certain special circumstances that make the crime more serious (such as also being accused of torturing the victim), he or she must be tried in adult court.
- **At the Discretion of Prosecutor Based on Crime and Criminal History.** If a youth has a significant criminal history and/or is accused of certain crimes listed in statute (such as murder), a prosecutor can file charges directly in adult court. Prosecutors have this ability in more cases for youths who were age 16 or 17 at the time the crime was committed than for those who were age 14 or 15.
- **At the Discretion of Judge Based on Hearing.** A prosecutor can request a hearing in which a juvenile court judge decides whether a youth should be transferred to adult court. For youths who were age 14 or 15 when the crime was committed, the crime must be one of certain significant crimes listed in statute (such as murder, robbery, or certain sex offenses). For youths who were age 16 or 17 when the crime was committed, the prosecutor can seek this hearing for any crime, but typically will only do so for more serious crimes or for youths with a significant criminal history.

Relatively few youths are sent to adult court each year. For example, less than 600 youths were sent to adult court in 2015. Less than 100 youths were sent to adult court at the discretion of a judge based on a hearing. The remainder were sent to adult court automatically based on the seriousness of their crime or at the discretion of a prosecutor based on their crime and/or criminal history.

Youths convicted in adult court when they are under 18 years of age are typically held in a state juvenile facility for the first portion of their sentences. When these youths turn age 18, they are generally transferred to state prison. However, if their sentences are short enough that they are able to complete their terms before turning age 21, they serve their entire sentences in a state juvenile facility. The state pays the entire cost of housing youths in a state juvenile facility who were convicted in adult court. After completing their sentences, these youths are generally supervised in the community by state parole agents.

PROPOSAL

This measure makes changes to the State Constitution to increase the number of inmates eligible for parole consideration and authorizes CDCR to award sentencing credits to inmates. The measure also makes changes to state law to require that youths have a hearing in juvenile court before they can be transferred to adult court. We describe these provisions in greater detail below.

Parole Consideration for Nonviolent Offenders. The measure changes the State Constitution to make individuals who are convicted of "nonviolent felony" offenses eligible for parole consideration after serving the full prison term for their primary offense. As a result, BPH would decide whether to release these individuals before they have served any additional time related to other crimes or sentencing enhancements.

The measure requires CDCR to adopt regulations to implement these changes. Although the measure and current law do not specify which felony crimes are defined as nonviolent, this analysis assumes a nonviolent felony offense would include any felony offense that is not specifically defined in statute as violent. As of September 2015, there were about 30,000 individuals in state prison who would be affected by the parole consideration provisions of the measure. In addition, about 7,500 of the individuals admitted to state prison each year would be eligible for parole consideration under the measure. Individuals who would be affected by the above changes currently serve about two years in prison before being considered for parole and/or released. Under the measure, we estimate that these individuals would serve around one and one-half years in prison before being considered for parole and/or released.

Authority to Award Credits. The measure also changes the State Constitution to give CDCR the authority to award credits to inmates for good behavior and approved rehabilitative or educational achievements. The department could award increased credits to those currently eligible for them and credits to those currently ineligible. As a result, CDCR could increase the amount of credits inmates can earn, which would reduce the amount of time served in prison.

Juvenile Transfer Hearings. The measure changes state law to require that, before youths can be transferred to adult court, they must have a hearing in juvenile court to determine whether they should be transferred. As a result, the only way a youth could be tried in adult court is if the juvenile court judge in the hearing decides to transfer the youth to adult court.

Youths accused of committing certain severe crimes would no longer automatically be tried in adult court and no youth could be tried in adult court based only on the decision of a prosecutor. In addition, the measure specifies that prosecutors can only seek transfer hearings for youths accused of (1) committing certain significant crimes listed in state law (such as murder, robbery, and certain sex offenses) when they were age 14 or 15 or (2) committing a felony when they were 16 or 17. As a result of these provisions, there would be fewer youths tried in adult court.

FISCAL EFFECTS

This measure would have various fiscal effects on the state and local governments. However, the magnitude of these effects would depend on how certain provisions in the measure are interpreted and implemented. As such, our estimates below are subject to significant uncertainty.

Parole Consideration for Nonviolent Offenders

Net State Savings. To the extent nonviolent offenders serve shorter prison terms due to the parole consideration provisions of the measure, it would reduce state costs as the size of the prison population would decline. The level of savings would depend heavily on the number of individuals BPH chose to release. Based on recent BPH experience with parole consideration for certain nonviolent offenders, we estimate that the ongoing fiscal impact of this provision would likely be state savings in the tens of millions of dollars annually. These savings would be offset somewhat by additional costs for BPH to conduct more parole considerations.

The measure would also result in temporary fiscal effects in the near term due to (1) additional savings from the release of offenders currently in prison who would be eligible for parole consideration and (2) an acceleration of parole costs to supervise those individuals who are released from prison earlier than otherwise.

Acceleration of County Costs. Because the measure would result in the early release of some individuals who are supervised by county probation officers following their release from prison, the measure would likely increase the size of the probation population in the near term. In the absence of the measure, counties would have eventually incurred these probation costs in the future.

Sentencing Credits for Prison Inmates

Net State Savings. To the extent CDCR awards individuals with additional credits, the measure would reduce state costs as a result of a lower prison population. Any level of savings is highly uncertain, as it would depend on how much average sentence lengths were reduced by CDCR. If the department granted enough credits to reduce the average time inmates serve by a few weeks, the measure could eventually result in state savings in the low tens of millions of dollars annually. However, the savings could be significantly higher or lower if the department made different decisions. Because the measure could result in the early release of some individuals who are supervised by state parole agents following release, the measure could temporarily increase the size of the parole population. The state, however, would eventually have incurred these parole costs even in the absence of the measure.

Acceleration of County Costs. Because the measure could result in the early release of some individuals who are supervised by county probation officers following their release from prison, the measure could increase the size of the probation population in the near term. In the absence of the measure, counties would have eventually incurred these probation costs in the future.

Prosecution of Youth in Adult Court

Net State Savings. If the measure's transfer hearing requirements result in fewer youths being tried and convicted in adult court, the measure would have a number of fiscal effects on the state. First, it would reduce state prison and parole costs as those youths would no longer spend any time in prison or be supervised by state parole agents following their release. In addition, because juvenile court proceedings are generally shorter than adult court proceedings, the measure would reduce state court costs. These savings would be partially offset by increased state juvenile justice costs as youths affected by the measure would generally spend a greater amount of time in state juvenile facilities. (As noted earlier, a portion of the cost of housing these youths in state juvenile facilities would be paid for by counties.) In total, we estimate that the net savings to the state from the above effects could be a few million dollars annually.

County Costs. If fewer youths are tried and convicted as adults, the measure would also have a number of fiscal effects on counties. First, as discussed above, counties would be responsible for paying a portion of the costs of housing these youths in state juvenile facilities. In addition, county probation departments would be responsible for supervising these youths following their release. Since juvenile court proceedings are generally shorter than adult court proceedings, the above county costs would be partially offset by some savings. For example, county agencies involved in court proceedings

for these youths—such as district attorneys, public defenders, and county probation—would experience a reduction in workload. **In total, we estimate that the net costs to counties due to the above effects would likely be a few million dollars annually.**

Other Fiscal Effects

The measure could also affect crime rates in varying ways. On the one hand, if the measure results in offenders spending less time in prison and more time in the community, it could result in these offenders committing additional crimes or crimes sooner than they otherwise would have. On the other hand, the measure could lead to more offenders participating in educational and rehabilitative programs that reduce the likelihood of them committing crimes in the future. The net effect of the above factors is unknown.

Visit <http://www.sos.ca.gov/measure-contributions> (<http://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/>) for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> (<http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html>) to access the committee's top 10 contributors.

REMCHO, JOHANSEN & PURCELL, LLP
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January 25, 2016

VIA MESSENGER

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

Attention: Ashley Johansson, Initiative Coordinator

RECEIVED

JAN 26 2016

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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

Dear Ms. Johansson:

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

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

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

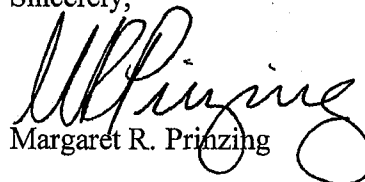
Ashley Johansson
Initiative Coordinator
Office of the Attorney General
January 25, 2016
Page 2

Smart on Crime
c/o James C. Harrison
Margaret R. Prinzing
Harry A. Berezin
Remcho, Johansen & Purcell, LLP

Fax: (510) 346-6201

Thank you for your time and attention to this matter.

Sincerely,



Margaret R. Prinzing

MRP:NL
Enclosures
(00266157)

January 25, 2016

VIA MESSENGER

Office of the Attorney General

Attention: Ashley Johansson, Initiative Coordinator

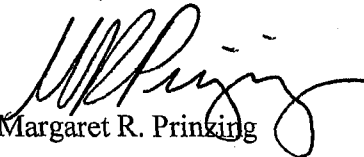
Re: *Submission of Amendment to The Justice and Rehabilitation Act, No. 15-0121, and Request to Prepare Circulating Title and Summary*

Dear Ms. Johansson:

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

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

Sincerely,


Margaret R. Prinzing

Enclosures
(00266162)

January 25, 2016

VIA MESSENGER

Office of the Attorney General

Attention: Ashley Johansson, Initiative Coordinator

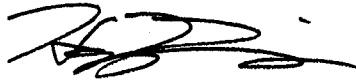
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Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the title and text of the Initiative. As one of the proponents of the initiative, I approve the submission of the amended text to the initiative and I declare that the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

Sincerely,



Harry Berezin

Enclosures
(00266171)

THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016

SECTION 1. Title.

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

SEC. 2. Purpose and Intent.

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

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

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

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

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

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

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

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

SEC. 4. Judicial Transfer Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(1) Murder.~~
- ~~(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.~~
- ~~(3) Robbery.~~
- ~~(4) Rape with force, violence, or threat of great bodily harm.~~

- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- (6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.
- (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
- (8) An offense specified in subdivision (a) of Section 289 of the Penal Code.
- (9) Kidnapping for ransom.
- (10) Kidnapping for purposes of robbery.
- (11) Kidnapping with bodily harm.
- (12) Attempted murder.
- (13) Assault with a firearm or destructive device.
- (14) Assault by any means of force likely to produce great bodily injury.
- (15) Discharge of a firearm into an inhabited or occupied building.
- (16) An offense described in Section 1203.09 of the Penal Code.
- (17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.
- (18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.
- (19) A felony offense described in Section 136.1 or 137 of the Penal Code.
- (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.
- (21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.
- (22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
- (23) Torture as described in Sections 206 and 206.1 of the Penal Code.
- (24) Aggravated mayhem, as described in Section 205 of the Penal Code.
- (25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5. Amendment.

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

SEC. 6. Severability.

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

SEC. 7. Conflicting Initiatives.

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

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

SEC. 8. Proponent Standing.

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

SEC. 9. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.