December 7, 2008

07-0095

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

RECEIVED
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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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

Dear Initiative Coordinator,

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

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

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

Sincerely,

Steven J. Ipsen

December 7, 2008

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

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

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

SECTION 1. TITLE

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

SECTION 2. FINDINGS AND DECLARATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. STATEMENT OF PURPOSES AND INTENT

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

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

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

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

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

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

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

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

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

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

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

SECTION 4.

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

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

SECTION 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter.~~
~~When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.~~

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

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

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

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

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

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

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

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

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

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

SECTION 6.

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

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

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

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

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

SECTION 7.

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

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

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

SECTION 8.

Section 8.1 is added to Article 4 of the California Constitution to read:

Sec. 8.1. (a) Except as provided in subdivision (b), no bill enacted by the Legislature that redefines, to the benefit of defendants, conduct subject to criminal sanctions, or that reduces or abolishes the punishment for a criminal act, or that creates a sentencing commission or other entity by any other name for the purpose of effecting reductions in sentences, shall have any effect upon any final judgment of conviction imposing that punishment. No final judgment imposed as a sentence for criminal conduct shall be reduced or eliminated by any subsequent statute enacted by the Legislature.
(b) Nothing in this Section shall be deemed to prohibit or limit the power of the governor to extend a pardon to or to commute or modify the sentence of any person convicted of a criminal offense, to prohibit or limit the power of the Legislature or the people by initiative or by legislative act to expand or modify the powers of the governor to extend pardon, commutation, or modification of the sentence to any person on an individual basis, or to prohibit or limit the power of the Legislature or the people by initiative or by legislative act to modify the standards and procedures for granting parole.

SECTION 9.

Section 11 of Article 6 of the California Constitution is amended to read:

SEC. 11. (a) ~~The~~ *Except as provided in Section 12 of this article, the* Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.
(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.
(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.

SECTION 10.

Section 12 of Article 6 of the California Constitution is amended to read:

SEC. 12. (a) The Supreme Court may, before decision, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause, *including a cause in which a judgment of death has been pronounced, notwithstanding Section 11 of this article,* from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction.
(b) The Supreme Court may review the decision of a court of appeal in any cause. *The Supreme Court shall have exclusive appellate jurisdiction over a cause in which a judgment of death has been pronounced until jurisdiction is transferred to the court of appeal as provided herein.*
(c) ~~The Judicial Council shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provisions for the time and procedure for transfer with instructions, for review of all or part of a decision, and for remand as improvidently granted.~~ *In any cause in which a judgment of death has been pronounced and in which the Supreme Court has transferred the cause to the court of appeal, the Supreme Court shall review the decision of the court of appeal. If the Supreme Court determines after review that the decision of the court of appeal contains no error within the meaning of Section 13 of this article, the Supreme Court may summarily affirm the judgment of the court of appeal by published order,. An order summarily affirming the judgment of the court of appeal shall be included in the*

Official Reports and shall be deemed to be a decision in writing with reasons stated within the meaning of Section 14 of this article.

(d) ~~This section shall not apply to an appeal involving a judgment of death.~~ *(1) Oral argument in the Supreme Court shall not be required as a precondition to an order by the Supreme Court summarily affirming the judgment of the court of appeal. However, the Supreme Court may grant oral argument upon review of a court of appeal judgment in a cause in which death has been pronounced.*

(2) The order of the Supreme Court granting oral argument in a cause in which death has been pronounced shall not preclude the Supreme Court from issuing an order summarily affirming the judgment of the court of appeal, nor shall it preclude the Supreme Court from issuing a written opinion addressing those parts of the decision of the court of appeal the Supreme Court concludes are necessary to its decision.

(3) Any decision of the Supreme Court that reverses all or any portion of the judgment of the court of appeal in any cause in which a judgment of death has been pronounced shall be preceded by oral argument and shall be by written decision with oral argument.

(e) Except as otherwise provided herein, and including a cause in which a judgment of death has been pronounced, the Judicial Council shall provide, by rules of court, for the time and procedure for transfer and for review, including, but not limited to, provisions for the time and procedure for transfer with instructions, for review of all or part of a decision, and for remand in a cause in which review has been improvidently granted.

(f) (1) Not later than 30 days after November 8, 2008, the Supreme Court shall determine and identify all causes pending in the Supreme Court in which a judgment of death has been pronounced that are fully briefed as determined by the Supreme Court.

(2) Not later than 120 days after November 8, 2008, the Supreme Court shall identify by written order the causes described in paragraph (1) in which the Supreme Court will retain appellate jurisdiction without transfer to the court of appeal. Any cause described in paragraph (1) in which the Supreme Court does not retain appellate jurisdiction by written order shall be transferred to the court of appeal.

(3) The Supreme Court may in its discretion transfer to the court of appeal any other cause in which judgment of death has been pronounced that is pending in the Supreme Court as of November 8, 2008.

(4) In any cause in which a judgment of death has been pronounced and which comes within the appellate jurisdiction of the Supreme Court after November 8, 2008, the Supreme Court shall provide by written order within 120 days following the completion of briefing whether the Supreme Court will retain appellate jurisdiction over the cause, or whether the Supreme Court will transfer the cause to the court of appeal. The Supreme Court may, in its discretion, transfer to the court of appeal any other cause pending in the Supreme Court in which judgment of death has been pronounced prior to the completion of briefing in the Supreme Court.

(g) In order to produce a balanced allocation of causes in which judgment of death has been pronounced and to prevent undue delay in the appellate resolution of those causes, the Supreme Court may transfer those causes among the courts of appeal without regard to the location of the superior court in which the judgment of death was pronounced. The transfer of such causes shall not be limited to courts of appeal within whose geographical jurisdiction the judgment of death was pronounced.

(h) In all causes transferred by the Supreme Court to the courts of appeal, including causes in which judgment of death has been pronounced, publication of the written opinion of the court of appeal shall be determined by rules of court prescribed by the Judicial Council.

SECTION 11.

Section 777 of the Evidence Code is amended to read:

777. (a) Subject to subdivisions (b) ~~and (c),~~ *through (f)*, the court may exclude from the courtroom any witness not at the time under examination so that ~~such~~ *the* witness cannot hear the testimony of other witnesses.

(b) A party to the action cannot be excluded under this section.

(c) If a person other than a natural person is a party to the action, an officer or employee designated by its attorney is entitled to be present.

(d) The court shall not exclude from any criminal proceeding, including, but not limited to, the penalty phase of a special circumstances trial, a non-testifying victim or immediate family member of a victim, except for good cause based upon unusual and extraordinary circumstances. No order excluding that person from the proceedings shall be made and entered except in compliance with the procedures of subdivision (g).

(e) After a victim or an immediate family member of the victim has testified in a criminal proceeding the court shall lift the exclusion order excluding that person. That person shall thereafter be allowed to be present at all subsequent proceedings where the defendant, the prosecuting attorney, and the public are allowed to be present.

(f) If, following the testimony of the victim or an immediate family member of the victim, the defendant moves that the victim or immediate family member continue to be excluded from the proceeding, and the court determines that further testimony from that person is or might be sought by either party, the court shall immediately interrupt the proceedings to allow that person to complete his or her testimony, subject to cross-examination. The victim or immediate family member shall thereafter be allowed to be present at all subsequent proceedings, even if that person is excused subject to recall.

(g) If, once a victim or an immediate family member of the victim has completed his or her testimony, whether or not subject to recall, for any reason the court seeks to exercise its inherent authority to ensure the orderly administration of justice by excluding the victim or an immediate family member of the victim from the proceeding, the court shall conduct a hearing outside the presence of the jury. Any order thereafter entered excluding that person from the proceedings shall be made in writing, on the record, and entered into the minutes of the court, and shall state the unusual and extraordinary circumstances that require exclusion of that person, and the reasons why no steps short of exclusion would be sufficient to ensure the orderly administration of justice. The order shall be expeditiously delivered to the victim or to the immediate family member excluded.

(h) A victim shall be allowed to request the court's reconsideration of an order, issued pursuant to this section, excluding the victim from criminal proceedings.

SECTION 12.

Section 12838 of the Government Code is amended to read:

12838. (a) There is hereby created in state government the Department of Corrections and Rehabilitation, to be headed by a secretary, who shall be appointed by the Governor, subject to Senate confirmation, and shall serve at the pleasure of the Governor. The Department of Corrections and Rehabilitation shall consist of Adult Operations, Adult Programs, Juvenile Justice, the Corrections Standards Authority, ~~the Board of Parole Hearings,~~ the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board.

(b) The Governor, upon recommendation of the secretary, may appoint two undersecretaries of the Department of Corrections and Rehabilitation, subject to Senate confirmation. The undersecretaries shall hold office at the pleasure of the Governor. One undersecretary shall oversee program support and the other undersecretary shall oversee program operations for the department.

(c) The Governor, upon recommendation of the secretary, shall appoint three chief deputy secretaries, subject to Senate confirmation, who shall hold office at the pleasure of the Governor. One chief deputy secretary shall oversee adult operations, one chief deputy secretary shall oversee adult programs, and one chief deputy secretary shall oversee juvenile justice for the department.

(d) The Governor, upon recommendation of the secretary, shall appoint an assistant secretary, subject to Senate confirmation, who shall be responsible for health care policy for the department, and shall serve at the pleasure of the Governor.

(e) The Governor, upon recommendation of the secretary, shall appoint an Assistant Secretary for Victim and Survivor Rights and Services, and an Assistant Secretary for Correctional Safety, who shall serve at the pleasure of the Governor.

SECTION 13.

Section 12838.4 of the Government Code is repealed.

~~12838.4. The Board of Parole Hearings is hereby created. The Board of Parole Hearings shall be comprised of 17 commissioners, who shall be appointed by the Governor, subject to Senate confirmation, for three-year terms. The Board of Parole Hearings hereby succeeds to, and is vested with, all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the following entities, which shall no longer exist: Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board. For purposes of this article, the above entities shall be known as "predecessor entities."~~

SECTION 14.

Article 15 (commencing with Section 12840) is added to Chapter 1 of Part 2.5 of Division 3 of Title 2 of the Government Code to read:

Article 15. Department of Parole.

12840. (a) There is hereby created in state government the Department of Parole, to be headed by a secretary, who shall be appointed by and serve at the pleasure of the Governor, and who shall not be subject to confirmation by the Senate. The Department of Parole shall be comprised by two separate agencies, the Board of Adult Parole Hearings, and the Board of Juvenile Parole.

(b) The Governor, upon recommendation of the secretary, shall appoint two undersecretaries of the Department of Parole. The undersecretaries shall hold office at the pleasure of the Governor and shall not be subject to confirmation by the Senate. One undersecretary shall oversee the Board of Adult Parole Hearings and the other undersecretary shall oversee the Board of Juvenile Parole.

(c) The Board of Adult Parole Hearings shall be comprised of not less than twelve commissioners, who shall be appointed by and serve at the pleasure of the Governor, in consultation with the secretary and the undersecretary of the Board of Adult Parole Hearings, for three-year terms, and who shall not be subject to confirmation by the Senate.

(d) (1) The Board of Adult Parole Hearings hereby succeeds to, and is vested with, all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the following entities, which shall no longer exist: Board of Prison Terms, Board of Parole Hearings, and the Narcotic Addict Evaluation Authority. For purposes of this article, the above entities shall be known as "predecessor entities."

(2) Commencing with the effective date of this article, any reference in any code to the Board of Prison Terms, the Board of Parole Hearings, or the Narcotic Addict Evaluation Authority shall be construed to refer to the Board of Adult Parole Hearings.

(e) Notwithstanding any other provision of law, the Board of Adult Parole Hearings or its successor in interest shall be the parole authority for all adult inmates in any facility under the jurisdiction of the Department of Corrections and Rehabilitation in the State of California, shall conduct parole proceedings as provided in Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code, and shall be independent of the supervision and control of the Department of Corrections and Rehabilitation and the Board of Juvenile Parole.

(f) The Board of Juvenile Parole shall be comprised of not less than five commissioners, who shall be appointed by and serve at the pleasure of the Governor, in consultation with the secretary and the undersecretary of the Board of Juvenile Parole, for three-year terms, and who shall not be subject to confirmation by the Senate.

(g) (1) The Board of Juvenile Parole hereby succeeds to, and is vested with, all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the following entities which shall no longer exist: Youthful Offender Parole Board, the Division of Juvenile Parole Operations, and the Juvenile Justice Parole Board. For purposes of this article, the above entities shall be known as "predecessor entities."

(2) Commencing with the effective date of this article, any reference in any code to the Youth Authority Board, the Youthful Offender Parole Board, the Division of Juvenile Parole Operations, or the Juvenile Justice Parole Board, shall be construed to refer to the Board of Juvenile Parole.

(h) Notwithstanding any other provision of law, the Board of Juvenile Parole or its successor in interest shall be the parole authority for all wards in any facility under the jurisdiction of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, and shall be independent of the supervision and control of the Department of Corrections and Rehabilitation and the Board of Adult Parole Hearings.

(i) The commissioners of the Board of Adult Parole Hearings and the commissioners of the Board of Juvenile Parole shall be authorized to meet on any subject and for any purpose with the governor or his or her designee, and shall be authorized to meet with each other for purposes of training and education, without being required to comply with the provisions of Article 9 of Chapter 1 of Part 1 of Division 3 of Title 2. To enable the governor to make informed determinations on reappointment of commissioners, the secretary shall annually provide to the governor a written report including individual and statistical information that shall include post-release criminal conduct of juvenile and adult parolees and which shall be a public record.

(j) No elected or appointed public official shall attempt to influence or interfere with any decision of the Board of Adult Parole Hearings or the Board of Juvenile Parole regarding the parole or the denial of parole of any inmate under the jurisdiction of the Board of Adult Parole Hearings or any ward under the jurisdiction of the Board of Juvenile Parole.

(k) Nothing in this Section shall be construed to change or restrict the powers of the governor set forth in subdivision (b) of Section 8 of Article V of the California Constitution regarding the parole of any person from any institution or facility in the State of California.

12840.1. (a) Any officer or employee of the predecessor entities who is engaged in the performance of a function specified in this article and who is serving in the state civil service, other than as a temporary employee, shall be transferred to the Department of Parole pursuant to the provisions of Section 19050.9.

(b) Any officer or employee of the continuing entities who is engaged in the performance of a function specified in this article and who is serving in the state civil service, other than as a temporary employee, shall continue such status with the continuing entity pursuant to the provisions of Section 19050.9.

(c) The status, position, and rights of any officer or employee of the predecessor entities shall not be affected by the transfer and shall be retained by the person as an officer or employee of the Department of Parole, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.

SECTION 15.

Section 4453.1 is added to Chapter 1 of Part 2 of Division 4 of the Labor Code to read:

4453.1. (a) *It is the intent of the People of the State of California in enacting this Section to facilitate the rights of victims of crime as described in subdivision (a) of Section 679.025 of the Penal Code by enabling the sheriff to utilize sentenced inmates for environmental cleanup, fire control abatement, and any other public safety or environmentally friendly work projects approved by the sheriff. This Section is enacted to enable the sheriff to alleviate jail overcrowding and the early release of sentenced inmates of the county jail and to make incarceration a meaningful deterrent by utilizing sentenced inmates for work projects described herein, without running afoul of laws regulating workers compensation.*

(b) Notwithstanding any other provision of law, for purposes of determining temporary disability benefits for any person entitled to benefits under this division as a result of an injury sustained by an inmate of any county jail, temporary jail, industrial farm, road camp, treatment facility, or city jail, or by an inmate assigned to a work release program under Section 4024.2 of the Penal Code, the average weekly earnings shall be taken at the minimum amount set forth in Section 4453 or the actual weekly wages lost due to disability resulting from the injury, whichever is less.

SECTION 16.

Section 679.02 of the Penal Code is amended to read:

679.02. (a) *(1) It is the intent of the People of the State of California in amending this section to provide a single statutory enactment which states* ~~The following are hereby established as~~ the statutory rights of victims *of* and witnesses ~~of~~ *to* crimes ~~:~~ *.*

(2) If any other statute provides rights to victims of crimes that are intentionally or inadvertently not listed in this section, it is the intent of the People that the rights recognized in this section shall be in addition to the rights provided in any other section of this Code. If this section does not accurately or fully describe a right of victims of crimes as provided in another section of this Code, the description of the right in the other section shall be deemed to prevail.

(b) The following are hereby recognized as the statutory rights of victims of crimes:

(1) To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness' attendance is not required.

(2) Upon request of the victim or a witness, to be informed by the prosecuting attorney of the final disposition of the case, as provided by Section 11116.10.

(3) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all sentencing proceedings, *including petitions or requests for sentence modification,* and of the right to appear, to reasonably express his or her views, have those views preserved by audio or video *or written* means, *at the discretion of the victim,* as provided in Section 1191.16, and to have the court consider his or her statements, as provided by Sections 1191.1 and 1191.15.

(4) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all juvenile disposition hearings in which the alleged act would have been a felony if committed by an adult, and of the right to attend and to express his or her views, as provided by Section 656.2 of the Welfare and Institutions Code.

(5) Upon request by the victim or the next of kin of the victim if the victim has died, to be notified of any parole eligibility hearing and of the right to appear, either personally as provided by Section 3043 of this code, or by other means as provided by Sections 3043.2 and 3043.25 of this code, to reasonably express his or her views, and to have his or her

statements considered, as provided by Section *3041, 3041.5,* 3043, *3043.2, 3043.4, 3043.6, and 3043.7,* of this code and by Section 1767 of the Welfare and Institutions Code.

(6) Upon request by the victim or the next of kin of the victim if the crime was a homicide, to be notified of an inmate's placement in a reentry or work furlough program, *notified of an inmate's transfer to a new facility or institution,* or notified of the inmate's escape as provided by Section 11155. (7) To be notified that he or she may be entitled to witness fees and mileage, as provided by Section 1329.1.

(8) For the victim, *to receive restitution for losses or injuries suffered from persons convicted of or adjudicated to have committed crimes or offenses, to be provided with information, expedited process, and tools necessary to collect restitution, as provided in Section 1191.4, and* to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code and Section 1191.2 of this code.

(9) To the expeditious return of his or her property which has allegedly been stolen or embezzled, when it is no longer needed as evidence, as provided by Chapter 12 (commencing with Section 1407) and Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

(10) To an expeditious disposition of the criminal action, *and to an expeditious resolution of post judgment proceedings, as provided in Sections 1054.9 and 1474.5.*

(11) To be notified, if applicable, in accordance with Sections 679.03 and 3058.8 if the defendant is to be placed on parole.

(12) To be notified by the district attorney's office where the case involves a violent felony, as defined in subdivision (c) of Section 667.5, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition before a change of plea is entered before a judge.

(A) A victim of any felony may request to be notified, by the district attorney's office, of a pretrial disposition.

(B) If it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the district attorney's office or the county probation department shall notify the victim as soon as possible.

(C) The victim may be notified by any reasonable means available.

(D) Nothing in this ~~paragraph~~ *subdivision* is intended to affect the right of the people and the defendant to an expeditious disposition as provided in Section 1050.

(13) To be notified by the district attorney's office in any case in which a plea agreement is entered into to enable the victim to have an opportunity to speak to the sentencing court prior to judgment and sentence, as provided by Section 1192.51.

(14) To attend and be present at all court proceedings where the defendant, the prosecuting attorney, and the general public are entitled to be present, as provided in Section 1102.6 and Section 777 of the Evidence Code.

(15) To be notified of and be given an opportunity to have input into the release of the defendant on bail or own recognizance, and to have his or her safety and the safety of his or her immediate family given a primary consideration in the release of the defendant on bail or own recognizance, as provided in Sections 1270, 1270.1, 1272, 1272.1, 1274, 1274.5, and 1275.

(16) To have law enforcement authorities make reasonable efforts to see that persons who commit criminal acts are brought before the courts of this State, as provided in Section 1546.

(17) To the enactment of statutes that promote and encourage the recruitment and retention of high qualified attorneys to become career criminal prosecutors, that mandate and facilitate high levels of training of these prosecutors, that promote high standards of prosecutorial ethics and sensitivity to the needs and rights of crime victims, and that ensure that the prosecutor is free from actual or apparent conflicts of interest in representing the People of the State of California in handling the prosecution of the accused, as provided in Sections 679.023, 679.024, and 679.024.1.

(18) To be notified of the earliest release date, scheduled release date, or the actual release of the defendant from a sentence or commitment to an institution in this state arising out of a criminal proceeding, as provided in Section 1192.52.

~~(13)~~ *(19)* For the victim, to be notified by the district attorney's office of the right to request, upon a form provided by the district attorney's office, and receive a notice pursuant to paragraph ~~(14)~~ *(20)*, if the defendant is convicted of any of the following offenses:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289, in violation of Section 220.

(B) A violation of Section 207 or 209 committed with the intent to commit a violation of Section 261, 262, 286, 288, 288a, or 289.

(C) Rape, in violation of Section 261.

(D) Oral copulation, in violation of Section 288a.

(E) Sodomy, in violation of Section 286.

(F) A violation of Section 288.

(G) A violation of Section 289.

~~(14)~~ *(20)* When a victim has requested notification pursuant to paragraph ~~(13)~~ *(19)*, the sheriff shall inform the victim that the person who was convicted of the offense has been ordered to be placed on probation, and give the victim notice of the proposed date upon which the person will be released from the custody of the sheriff.

(21) To be protected from exploitation by public officials of their persons, their families, and the facts surrounding their cases, as provided in Section 679.021.

(22) To be informed of the rights of crime victims enumerated in the California Constitution and in the statutes of this State, as provided in Section 679.026.

(c) Unless explicitly stated to the contrary, the term "victim" as used in any provision of this Code shall have the same meaning as provided in paragraph (6) of subdivision (b) of Section 28 of Article 1 of the California Constitution.

(d) (1) The terms "loss" and "injury" as used in any provision of this Code relating to restitution to a victim of crime shall be broadly construed to include any economic loss, including, but not limited to, medical, dental, psychiatric, and chiropractic expenses, repairs to real property, replacement of or repairs to personal property, insurance deductibles, lost wages, and any other loss as defined in any other provision of this Code. The terms "loss" and "injury" shall not be construed to include pain and suffering.

(2) In the case of a homicide or other criminal act causing the death of a victim, the probation officer shall notify the next of kin, administrator of the estate, or any immediate family member of the victim, of the right to seek restitution for the estate of the decedent. In addition to any economic loss described in paragraph (1), the court shall award restitution for lost wages of the decedent calculated from actuarial tables and a reasonable judicial calculation of the expected annual income of the decedent over the period of the life expectancy of the decedent. Restitution, as determined by the court, shall be ordered in favor of the decedent's estate.

(d) The rights set forth in subdivision ~~(a)~~ *(b)* shall be set forth in the information and educational materials prepared pursuant to Section 13897.1. The information and educational materials shall be distributed to local law enforcement agencies and local victims' programs by the Victims' Legal Resource Center established pursuant to Chapter 11 (commencing with Section 13897) of Title 6 of Part 4.

~~(c)~~ *(e)* Local law enforcement agencies shall make available copies of the materials described in subdivision ~~(b)~~ *(d)* to victims and witnesses.

SECTION 17.

Section 679.021 is added to Title 17 of Part 1 of the Penal Code to read:

679.021. (a) It is the intent of the People of the State of California in enacting this Section to preserve and protect the rights of victims of crime and their families enumerated in paragraph (2) of subdivision (a) of Section 28 of Article I of the California Constitution and subparagraph (A) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to be treated with respect for their dignity and privacy and to be free from exploitation and abuse at any time during or following the conclusion of the criminal process.

(b) (1) No person while seeking public office or while serving in a public office may exploit a victim of crime, any member of the family of a victim of crime, or the facts and circumstances surrounding the crime and its prosecution, for the purpose of election or appointment to public office, without the prior, express consent of the victim or the family of the victim.

(2) No person while seeking public office or while serving in a public office may post in any campaign publication the name, image, or voice of any victim of crime, or of any member of the family of any victim of crime, without the prior, express consent of that person.

(A) A publication includes, but is not limited to, any writing, electronic website, and any television, radio, public statement, or other media communication.

(B)The prohibition of this paragraph applies to publications issued by a person in his or her official capacity, private capacity, or as a candidate for public office, and it applies to publications issued by another person at his or her direction or with his or her consent.

(3) The name, image, or electronic recording of a victim of crime or any member of the family of a crime victim shall be removed from a publication as defined herein within forty-eight after receipt of the request for removal from the crime victim or a member of his or her family.

(4) The right to request removal as specified in paragraph (3) shall be held by a juvenile victim of crime and also by the custodial parent or guardian of the juvenile.

(5) The right to request removal as specified in paragraph (3) shall be held by the spouse, parents, children, or any other next of kin of a homicide victim.

(c) Nothing in this Section shall be construed to abridge the right of freedom of speech as protected by the First Amendment of the United States Constitution. Should the courts construe the First Amendment of the United States to permit the publication of matter prohibited by paragraph (2) of subdivision (b), the victim, a member of the family of the victim, or other person designated in paragraphs (4) and (5) of subdivision (b) shall have the right to be provided with equal time or space in the publication, at no expense to such person.

(d) Consent to publication of any matter described in paragraph (2) of subdivision (b) shall be obtained in writing, shall be signed and dated by the person granting consent, and the written document of consent shall be maintained and considered a public record within the meaning of the California Public Records Act, Government Code section 6250 et seq. The written document of consent shall contain a description of any compensation paid or granted in return for the consent or the publication of any matter described in paragraph (2) of subdivision (b).

(e) As used in this Section, a public official is defined as any elected or appointed government official, any person who is a candidate for political office, or any person who is seeking appointment to a political office. A public official shall include, but is not limited to, statewide officers, members of the State Legislature, members of the County Board of Supervisors, County sheriffs, district attorneys, and city attorneys.

(f) Not withstanding any other provision of law granting immunity to a public official for his or her official acts, a public official who fails to remove published content as defined in this Section when requested to do so as provided herein, or who fails to provide equal time or space as provided herein, shall be subject to a civil action for damages.

(g) Except as provided in subdivision (f), nothing in this Section shall be construed to create or authorize additional civil liability for conduct prohibited pursuant to subdivision (b).

SECTION 18.

Section 679.022 is added to Title 17 of Part 1 of the Penal Code to read:

679.022. (a) It is the intent of the People of the State of California in enacting this Section to preserve and protect the rights of victims of crime and their families enumerated in paragraph (5) of subdivision (a) of Section 28 of Article I of the California Constitution, and subparagraph (F) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to be informed about and to appropriately participate in judicial proceedings against their wrongdoers and to be informed of and to have opportunity to provide input into decisions of the prosecuting attorney concerning the filing of criminal charges against the accused.

(b) A victim of a crime shall, upon request, have the right to meet with a criminal prosecutor regarding the filing of charges arising out of the case involving the victim. The detective assigned to investigate the case, or the filing officer of the investigating agency, shall, upon request, notify the victim of the filing decision no later than seventy two hours following that filing decision. If the prosecutor has declined to file charges, the victim in that case shall be informed of his or her right to meet with and be heard by the prosecutor who actually made the decision to decline to file charges, and to request a reconsideration by that prosecutor or of the office of that prosecutor of the filing decision. In every case involving an alleged homicide or alleged sexual abuse of a minor in which a criminal prosecutor declines to file charges, the elected or appointed district attorney shall make good faith, reasonable efforts to meet with the next of kin of the decedent, or the parents or guardians of the child, if requested to do so by the next of kin, parents, or guardians.

SECTION 19.

Section 679.023 is added to Title 17 of Part 1 of the Penal Code to read:

679.023. (a) It is the intent of the People of the State of California in enacting this Section to preserve and protect the right of victims of crime and their families enumerated in subparagraph (E) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to the enactment of statutes that ensure that the prosecutor is free from actual conflicts of interest and the appearance of conflicts of interest in representing the People of the State of California in handling the prosecution of the accused.

(b) No criminal prosecutor, including an elected or appointed district attorney or city attorney, may knowingly receive or solicit a gift, donation, campaign contribution, service, use of real or personal property, or any other thing or service of value, from any criminal defendant, criminal defense attorney, or the immediate family, employees, or business partners of a criminal defendant or criminal defense attorney, during the time that the criminal defendant or the criminal defense attorney is litigating a criminal prosecution filed by the office of that criminal prosecutor. This provision shall be construed to prohibit the personal receipt or solicitation of items listed herein, direct or indirect solicitation efforts on behalf of another

person or organization, and the solicitation or receipt of a promise of future receipt of items listed herein. Conduct prohibited by this Section may be prosecuted as a criminal offense as provided in this Code.

(c) Should the courts construe the First Amendment of the United States to permit the conduct that is prohibited by this Section, a criminal prosecutor described in subdivision (b) shall include in any campaign publication, as described in paragraph 2 of subdivision (b) of Section 679.021, a disclaimer printed or spoken in equally prominent language, stating that the candidacy of the criminal prosecutor is "supported and funded by criminal defense attorneys and/or criminal defendants."

SECTION 20.

Section 679.024 is added Title 17 of Part 1 of the Penal Code to read:

679.024. (a) It is the intent of the People of the State of California in enacting this Section to facilitate and support the right of victims of crime specified in subparagraph (E) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to the enactment of legislation that promotes and encourages the recruitment and retention of highly qualified attorneys to become career criminal prosecutors, that mandates and facilitates high levels of training of these prosecutors, and that promotes high standards of prosecutorial ethics and sensitivity to the needs and rights of crime victims in representing the People of the State of California in handling the prosecution of the accused.

(b) Notwithstanding any other provision of law, every county and every office of the district attorney located therein, shall adhere to the following standards for deputy and assistant criminal prosecutors appointed pursuant to Section 24101 of the Government Code:

(1) (A) Elected and appointed district attorneys and their assistants and deputies, hereafter described as "criminal prosecutors," shall, during each two-year period, as a requirement of continued employment, complete eight hours of continuing legal education provided by a "prosecutors college," as defined in subparagraph (C). Four hours of this training shall be devoted to "Nifong Training," training that focuses upon the important subject of prosecutorial ethics in prosecuting criminal cases. Four hours of this training shall be devoted to training on the rights of crime victims in criminal prosecutions set forth in the "Victims Bill of Rights" enacted in 1982 by Proposition 8 and amended by the "Victims Rights Act of 2008 – Marsy's Law," and sensitivity training that focuses on crime victims in criminal prosecutions, and sensitivity training that focuses on the relationship between the prosecutor and the crime victim in a criminal prosecution.

(B) Each county shall provide to its criminal prosecutors the opportunity to obtain and provide continuing legal education specifically geared to prosecutors and designed to provide uniform statewide training. Each county shall provide or offer to, or allow if requested, its criminal prosecutors no less than 16 hours of paid time away from work, or compensatory time if completed on weekends, to attend or to teach at continuing legal education courses offered at a "prosecutors college." Each county shall provide to its criminal prosecutors reasonable and adequate time during working hours or reasonable and adequate compensatory time for study by its criminal prosecutors during non-working hours, to adequately study for promotional examinations, and to complete the continuing legal education described in this paragraph.

(C) For purposes of this section a "prosecutors college" is defined as educational courses offered by any statewide organization of criminal prosecutors of which at least eighty per cent of the elected and appointed district attorneys in California are members or have been members over a prior two-year period, which are authorized providers of mandatory continuing legal education (MCLE) certified by the State Bar of California, and which are nonprofit organizations under paragraph (6) of subdivision (c) of Section 501 of the Internal Revenue Code.

(D) The required continuing legal education described in subparagraph (A) shall be effective January 1, 2010. Prior to January 1, 2010, criminal prosecutors may comply with the mandated continuing legal education described in subparagraph (A) by an on-line, video, or written self study course developed by the prosecutors college at a fee not to exceed that charged for in-person attendance.

(E) In the event that there is no qualified provider capable and willing to provide the mandated ethics and victims rights training required by subparagraphs (A) or (B), the Attorney General shall ensure that the continuing legal education is provided. The means by which the Attorney General shall meet this mandate shall be within the discretion of the Attorney General.

(F) The provisions of subparagraph (B) shall apply only to counties of the first class.

(2) Each county shall pay a yearly membership fee on behalf of each criminal prosecutor it employs to one provider of continuing legal education as described in subparagraph (C) of paragraph (1). This membership fee shall not exceed twenty-five percent of the yearly dues paid by attorneys to the State Bar of California to practice law in California.

(3) Each county shall provide to its criminal prosecutors upon their request, through collective bargaining or otherwise, health insurance plans of the Public Employees Medical and Hospital Care Act (PEMHCA) offered by CalPERS and shall pay the same percentage of the premiums of such plans that the county paid for non-PEMHCA health insurance plans for its criminal prosecutors as of January 1, 2007. If in the initial year of transfer to PEMHCA health insurance plans the cost of the county's subsidy of PEMHCA health insurance plan premiums exceeds the cost of the county's same percentage subsidy of non-PEMHCA health insurance plan premiums, the percentage of the premium paid by the participating prosecutor shall be adjusted so that no additional cost is incurred by the county, and the adjusted percentage shall be adopted as the new county contribution for the term of the coverage.

(4) In any county that has established an office of the public defender or its equivalent, or an office of the county counsel or its equivalent, deputy and assistant criminal prosecutors shall receive salaries and benefits, including a retirement plan, that are not less than the salary and benefits paid, and promotions to higher grades in comparable proportion and at comparable rates, to deputy and assistant public defenders and deputy and assistant county counsel of comparable position and years of service in the county, except that:

(A) Any employment benefit that may be ~~is~~ granted as a group benefit to prosecutors and other county attorney groups, may be granted as a benefit to criminal prosecutors as a separate and individual class benefit, notwithstanding any other provision of law.

(B) Criminal prosecutors are deemed to be in a class known as "law enforcement officials" and may participate in collective bargaining with law enforcement organizations, including peace officers, and shall be allowed to join as members in or as affiliated members of any such local or statewide bargaining group or union which in its discretion agrees to accept criminal prosecutors as members or affiliates.

(5) Notwithstanding the exclusion of attorneys and physicians from the Federal Fair Labor Standards Act (FLSA) or any other provision of law, unless defined by their employer and treated as professional salaried employees, criminal prosecutors shall be accorded the same protections of the rules and regulations of the Fair Labor Standards Act as applied to employee groups who are protected by the rules and regulations of the Fair Labor Standards Act.

(A) Regardless of whether classified as salaried employees or non salaried employees, in addition to FLSA protections described in this paragraph, any criminal prosecutor participating in a criminal jury trial shall receive a minimum presumptive three hours of compensatory time for each day of that trial, including jury selection, but excluding jury deliberation time, and a minimum presumptive one hour per day of compensatory time for each full day assigned to conduct preliminary examinations, whether time spent preparing for trial or preliminary examinations was in the office, at home, or at some other location. A criminal prosecutor assigned to work in a courtroom with regular working hours shall receive compensatory time for actual hours of overtime worked in court beyond five o'clock in the afternoon.

(B) Criminal prosecutors shall be permitted to submit written documentation of actual hours worked and compensatory hours requested for trial, preliminary examination, or after normal court hours worked. Such written documentation by a prosecutor pursuant to this section shall accurately document the actual hours worked, whether or not pre-authorized or pre-approved, shall include the number of hours requested as compensatory hours, and shall be maintained as a personnel record by his or her office. No managerial policy or action shall seek to abridge the provisions of this paragraph or to dissuade prosecutors from working the hours necessary to adequately prepare for trial or preliminary examinations or from attending after hours court proceedings, from submitting accurate written documentation of actual time worked, or from seeking compensation as provided herein.

(C) The provisions of this paragraph shall apply only to counties of the first class as described in Section 28022 of the Government Code.

(c) (1) Except as provided in subparagraph (F) of paragraph (1) and subparagraph (C) of paragraph (5) of subdivision (b), the provisions of this Section shall also apply to deputy and assistant criminal prosecutors hired by ~~every~~ city and the office of the city attorney located therein, other attorneys employed by a city or county who handle criminal matters, and their employers.

(2) Except as provided in subparagraph (F) of paragraph (1) and subparagraph (C) of paragraph (5) of subdivision (b), the provisions of this Section shall also apply to all deputy attorneys general employed by the State of California, and who handle the prosecution of criminal cases at the trial and appellate level and related state and federal habeas corpus litigation. Unless otherwise specifically provided in this Section, all obligations imposed upon counties with respect to their criminal prosecutors shall also be imposed on the State of California with respect to deputy attorneys general. For the purpose of paragraph (4) of subdivision (b), relevant comparable entities shall include, but shall not be limited to, the State Public Defender's Office and the Habeas Corpus Resource Center.

(d) The provisions of this Section shall not be construed to diminish or permit a reduction in current salary and benefits or conditions of employment to levels that are less than the minimum standards set forth herein.

SECTION 20.1.

Section 679.024.1 is added to Title 17 of Part 1 of the Penal Code to read:

679.024.1. (a) (1) It is the intent of the People of the State of California in enacting this Section to facilitate and support the right of victims of crime specified in subparagraph (E) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to the enactment of legislation that promotes and encourages the recruitment and retention of highly qualified attorneys to become career criminal prosecutors, that mandates and facilitates high levels of training of these prosecutors, and that promotes high standards of prosecutorial ethics and sensitivity to the needs and rights of crime victims in representing the People of the State of California in handling the prosecution of the accused.

(2) In enacting this Section the People of the State of California hereby ratify the findings of the Legislature in Assembly Bill 2023 [Stats.2002. ch. 1152] that the safety and welfare of the people of California require that California's state and local prosecutors be included in the safety retirement system in order to ensure that the highest quality of attorneys be attracted to, and retained in, these positions of public service, and in order to ensure that the administration of justice in the California criminal justice system is of the highest caliber and integrity.

(b) (1) Notwithstanding any other provision of law, every local prosecutor, as defined in Section 20423.6 of the Government Code, shall be provided the benefit formula set forth in Sections 21362, 21363, or 21363.1 of the Government Code, as applicable. No majority vote of the governing board of the contracting agency shall be required, nor shall the contracting agency be required to include local public defenders or local public defender investigators, in order to comply with the provisions of this paragraph.

(2) Notwithstanding any other provision of law, every local prosecutor, as defined in Section 31469.2 of the Government Code, shall be provided the benefit formula set forth in Sections 31664 or 31664.2 of the Government Code, as applicable. No majority vote of the board of supervisors shall be required, nor shall the county be required to include local public defenders or local public defender investigators, in order to comply with the provisions of this paragraph.

(3) Notwithstanding any other provision of law, every local prosecutor, as defined in Section 45311 of the Government Code, shall be accorded those pension benefits accorded to safety members under the retirement system of the city. No majority vote of the city council or board of supervisors shall be required, nor shall the city be required to include local public defenders or local public defender investigators, in order to comply with the provisions of this paragraph.

(4) Notwithstanding any other provision of law, every local prosecutor, as defined in Section 53217.6 of the Government Code, shall be accorded those pension benefits accorded to safety members of the applicable county sheriff's department or the applicable police or fire department of the public agency. No majority vote of the city council or board of supervisors shall be required, nor shall the city or city and county be required to include local public defenders or local public defender investigators, in order to comply with the provisions of this paragraph.

(5) Notwithstanding any other provision of law, every state prosecutor, as defined in Section 20401.5 of the Government Code, shall be provided the benefit formula set forth in Section 21369.1 of the Government Code. No decision by the state employer electing to be subject to Section 20401.5 of the Government Code shall be required, nor shall the state employer be required to include state public defenders, in order to comply with the provisions of this paragraph.

(c) The provisions of this Section shall apply only to a local prosecutor or state prosecutor described in subdivision (b) who meets all of the following requirements:

(1) The local or state prosecutor has performed not less than twenty-five actual full-time years of service, and/or their part-time equivalent, as a California local or state prosecutor;

(2) The local or state prosecutor has performed not less than 8 actual full-time years of service, or their part-time equivalent, as a California local or state prosecutor following the effective date of this Section; and

(3) The local or state prosecutor has contributed to his or her applicable safety retirement plan as a local or state prosecutor for not less than 8 actual years, or their part-time equivalent, prior to his or her retirement.

(d) A local or state prosecutor may purchase up to 5 years of the requirement set forth in paragraph (3) of subdivision (c) by paying for those years the same contribution rate as otherwise required for the local or state prosecutor's contributions to his or her safety retirement plan.

(e) Notwithstanding any other provision of this section, within 90 days after this section becomes operative, or on the first day of the calendar month following his or her entrance into service, whichever is later, any local or state prosecutor may file a written election not to become subject to the pension benefits described in subdivision (b).

SECTION 21.

Section 679.025 is added to Title 17 of Article I of the Penal Code to read:

679.025. (a) It is the intent of the People of the State of California in enacting this Section to preserve and advance the rights of victims of crime specified in paragraphs (3) and (6) of subdivision (a) of Section 28 of Article I of the California Constitution to expect that that the Legislature, and other governing bodies that are responsible for ensuring that public safety budgets, provide sufficient resources to house in any state prison, county jail, or other state or local correctional or rehabilitation facility, all persons sentenced to those institutions or otherwise judicially compelled to abide by limitations on their freedoms as punishment for criminal activity, so that sentences imposed upon criminal wrongdoers will not be thwarted by the premature release of these wrongdoers caused by inadequate physical or personnel capacity to incarcerate them.

(b) In any county in which the overcrowding of inmates in the county jail has reached crisis levels as defined in Section 4004.6, the provisions of that Section shall become operable.

(c) In order to address the problems of overcrowding and congested conditions in the criminal justice system and to diminish their impact on the rights of crime victims, a pilot program, with implementation provisions, shall be established pursuant to Section 4004.7 to assess the applications of technology to overcrowding in the criminal justice system, including county jails and courthouses, caused by inefficient use of resources and application of technology and the failure of the Legislature and other governing bodies that are responsible for ensuring sufficient funding for public safety budgets, to provide sufficient resources to relieve these overcrowded and congested conditions.

SECTION 22.

Section 679.026 is added to Title 17 of Part 1 of the Penal Code to read:

679.026. (a) It is the intent of the People of the State of California in enacting this Section to implement the right of victims of crime established in subparagraph (T) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution to be informed of the rights of crime victims enumerated in the Constitution and in the statutes of this state.

(b) Every victim of crime has the right to receive without cost or charge a list of the rights of victims of crime recognized in Section 28 of Article I of the California Constitution, and in the provisions of this Code, including, but not limited to, Section 679.02. These rights shall be known as "Marsy Rights."

(c) (1) Every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall, as provided herein, at the time of initial contact with a crime victim, during a follow-up investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys, provide or make available to each victim of that criminal act without charge or cost a "Marsy Rights" card described in paragraphs (2) or (3).

(2) The Attorney General shall design and make available in "pdf" or other imaging format to every agency listed in paragraph (1) a "Marsy Rights" card, which shall contain the rights of crime victims described in subdivision (b), information on the means by which a crime victim can access on-line information regarding these rights, and a toll-free telephone number to enable a crime victim to contact a local victim's assistance office.

(3) Every law enforcement agency which investigates criminal activity shall, if provided without cost to the agency by any organization classified as a nonprofit organization under paragraph (3) of subdivision (c) of Section 501 of the Internal Revenue Code, make available and provide to every crime victim a "Victims Survival and Resource Guide" pamphlet and/or video that has been approved by the Attorney General. The "Victims Survival and Resource Guide" and video shall include an approved "Marsy Rights" card, a list of government agencies, non-profit victim's rights groups, support groups, and local resources that assist crime victims, and any other information which the Attorney General determines might be helpful to victims of crime.

(4) Any agency described in paragraph (1) may in its discretion design and distribute to each victim of a criminal act its own Victims Survival and Resource Guide and video, the contents of which have been approved by the Attorney General, in addition to or in lieu of the materials described in paragraph (3).

SECTION 23.

Section 1054.9 of the Penal Code is amended to read:

1054.9. *Except as provided in Section 1474.5, no court shall order disclosure of any materials and information described in Section 1054.1 to a defendant upon whom sentence or judgment has been pronounced.*~~(a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery~~

~~materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b).~~

~~(b) For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.~~

~~(c) In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and nothing in this section shall provide an alternative means of access to physical evidence for those purposes.~~

~~(d) The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the defendant.~~

SECTION 24.

Section 1191.1 of the Penal Code is amended to read:

1191.1. *(a)* The victim of any crime, or the parents or guardians of the victim if the victim is a minor, or the next of kin of the victim if the victim has died, have the right to attend all sentencing proceedings under this chapter, *including proceedings in which the sentence of the defendant might be modified,* and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.

(b) The victim, or up to two of the victim's parents or guardians if the victim is a minor, or the next of kin of the victim if the victim has died, have the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his, her, or their views concerning the crime, the person responsible, *the need for punishment and deterrence,* and the need for restitution. *These persons shall be given the right to speak first at the sentencing proceedings. If any statements or evidence is presented by the defendant, the victim and the other persons named in subdivision (a) shall also be given the right to speak last at the sentencing proceedings.*

(c) The court in imposing sentence shall consider the statements of victims, parents or guardians, and next of kin made pursuant to this section and shall state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation.

~~The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.~~

SECTION 25.

Section 1191.4 is added to Chapter 1 of Title 8 of Part 2 of the Penal Code to read:

1191.4. (a) *The People of the State of California find and declare that although numerous statutes have been enacted since 1982 in an effort to implement subdivision (b) of Section 28 of Article 1 of the California Constitution, those measures have failed to provide victims of criminal activity with the tools necessary to collect restitution from persons convicted of or adjudicated to have committed the crimes or offenses for the losses suffered by these victims. It is the intent of the People in enacting this section to provide victims of criminal activity with these necessary tools.*

(b) (1) At the time of the entry of any order of restitution in a criminal or juvenile proceeding pursuant to Section 1202.4, Section 730.6 of the Welfare and Institutions Code, or any other provision of law, the court shall require the person who has been convicted of a crime in which there is a potential claim for restitution, or who has been ordered to make restitution, to complete and sign under penalty of perjury a form that provides at least the following information: (1) his or her full legal name and the full legal name of his or her spouse, (2) all aliases used during the preceding five years, (3) place and date of birth, (4) his or her social security account number and the social security account number of his or her spouse, (5) his or her drivers license and/or California identification numbers and the drivers license or California identification numbers of his or her spouse, (6) immigration card number, if the person is not a United States citizen, (7) passport number, (8) the address or location of all real property owned by him or her or by his or her spouse, (9) the vehicle license numbers and/or VIN numbers of all vehicles owned or registered in his or her name or the name of his or her spouse, (10) the account numbers of all accounts held individually or jointly in financial institutions, (11) the names and addresses of all employers during the preceding five years, (12) the names and addresses of all union memberships, (13) the names and account numbers of all life insurance policies of which the person is a beneficiary, and the name,

business license number, or other identifying number of any business or partnership in which he or she has a legal interest . The court may in its discretion require the person to provide additional information the court determines might be useful in facilitating collection of the restitution ordered.

(2) The original form described in paragraph (1) shall be filed with the clerk of the court, but, except as provided in paragraph (3), shall not be deemed to be a public record.

(3) A copy of the form described in paragraph (1) shall be provided to the office of the prosecuting attorney, who shall retain the copy as a permanent record, and to any victim to whom the person has been ordered to make restitution.

(4) At any time following the entry of an order of restitution as described in paragraph (1), the crime victim shall be entitled to conduct in the manner otherwise authorized by law an order of examination of the person ordered to make restitution.

(c) Notwithstanding any other provision of law, all monetary payments, monies, and property collected by the court or by the probation department, or held by the arresting agency, from any person who has been ordered to make restitution pursuant to Section 1202.4, Section 730.6 of the Welfare and Institutions Code, or any other provision of law, shall be first applied to pay the amounts ordered by the court as restitution to the victim.

(d) Notwithstanding any other provision of law, no court, probation officer, or other public employee or officer shall reduce the amount, rate or frequency of a court-ordered regularly scheduled restitution payment, unless the court first enters a finding that based on the face of a written motion to modify the restitution amount or payment schedule there is a clear justification for reducing restitution payments. The court shall hear a motion to modify the restitution amount or payment schedule only upon proof that the prosecuting attorney and the crime victim have been given at least thirty days actual notice of the motion.

(e) (1) Notwithstanding the entry of a court-ordered payment schedule, or a judicial finding of hardship to the defendant, a crime victim may retain the services of a private debt collector at any time to satisfy an order of restitution arising from a conviction in a criminal case utilizing lawful debt collection mechanisms applicable to satisfying a civil judgment.

(2) If restitution to the crime victim has not been paid in full at the end of three years following the initial entry of the order of restitution, the balance of the unpaid restitution, including a ten percent annual interest charge, shall by operation of law without further action by the court or any party be subject to a thirty percent surcharge to pay for the costs of private debt collection. If the victim or the next of kin of the victim have retained the services of a private licensed debt collection agency, that agency or the victim shall deliver to the court a signed copy of the debt collection contract authorizing collection of the balance of restitution, interest, and surcharge, and shall be provided with an order authorizing the collection of such sums by all legal means. All funds recovered by the private debt collection agency, including the thirty percent surcharge to be paid the debt collector on a pro-rata basis, shall be delivered to the court or probation officer and disbursed as ordered by the court to the crime victim and debt collection agency through the probation officer or the court. No private debt collector may charge a crime victim any fee or charge for expenses other than the thirty percent surcharge described herein.

(3) The jurisdiction of the court over restitution as provided herein shall extend beyond the termination of probation, the imposition of a sentence to the state prison, the termination of parole, and any other event or circumstance which might otherwise terminate the jurisdiction of the court over the case or the defendant, until restitution, interest, penalties, and surcharges have been paid or collected in full.

(f) Notwithstanding any other provision of law, ~~no court shall terminate the probation of any person who has been ordered to make restitution pursuant to Section 1202.4, Section 730.6 of the Welfare and Institutions Code, or any other provision of law, until the person has made restitution in full as provided in the restitution order.~~no person ordered to pay restitution pursuant to Section 1202.4, Section 730.6 of the Welfare and Institutions Code, or any other provision of law, who has failed to pay in full the restitution, interest, penalties, and surcharges owed to the victim pursuant to this Section, shall receive any of the following:

(1) an order successfully terminating probation;

(2) an order terminating probation prior to the period ordered by the court;

(3) an order reducing the conviction to a misdemeanor under the provisions of Section 17;

(4) an order dismissing the charges under the provisions of Section 1203.4;

(5) an order reducing, waiving, or expunging the restitution, interest, penalties, and surcharges owed; or

(6) an order expunging the criminal record of the person.

(g) Notwithstanding any other provision of law, no court shall waive, expunge, or in any other manner excuse full compliance with any restitution ordered pursuant to Section 1202.4, Section 730.6 of the Welfare and Institutions Code, or any other provision of law, unless such action is at the express request or with the express permission of the victim or other person to whom restitution is owed.

(h) (1) Not later than January 1, 2010, the Department of Justice shall conduct and complete a study of the feasibility of authorizing procedures to assist crime victims to collect on restitution judgments that are utilized in the child support enforcement program pursuant to Title IV of the Social Security Act. These procedures shall include, but not be limited to, state and federal income tax refund intercepts, lottery winnings intercepts, social security intercepts, unemployment and disability insurance intercepts, general assistance and welfare benefits intercepts, real estate liens, liens on estates in probate proceedings, mandatory employer reporting of new hires, wage assignments and garnishment of wages, and state license matching (known as SLIMS).

(2) The Department of Justice shall recommend to the Legislature enactment of legislation necessary to implement procedures as described in paragraph (1) to assist crime victims in obtaining restitution. In the event that the Legislature does not enact such legislation, the Attorney General shall file the legislation as an initiative proposal for inclusion in the next election in which initiatives may be enacted.

(i) The Department of Justice shall develop and publish a handbook to be provided to crime victims describing the ways in which a restitution judgment may be enforced. The Department shall provide this written material to the probation officer in each county, who shall provide the material to crime victims. The Department shall also make this information available on its web site in a user-friendly format.

SECTION 26.

Section 1192.51 is added to Chapter 1 of Title 8 of Part 2 of the Penal Code to read:

1192.51. (a) It is the intent of the People of the State of California in enacting this section to facilitate the right of victims of crime specified in paragraph (4) of subdivision (a) of Section 28 of Article I of the California Constitution to be informed about and to appropriately participate in judicial proceedings against their wrongdoers, and to appropriately participate in proceedings involving the punishment and incarceration of their wrongdoers, and that victims of crime not be denied input into the criminal proceeding arising out of a plea agreement of which the victims are unaware between the prosecuting attorney and the defendant affecting either the charges or the sentence.

(b) In every criminal prosecution in which a victim is named in the accusatory pleading, and in which the prosecuting attorney and the defendant reach a plea agreement, the prosecuting attorney shall notify the victim or the next of kin of a deceased victim of the plea agreement, the date set for judgment and sentencing, and the right of the victim to provide input to the court prior to judgment and sentencing.

(c) In every criminal case described in subdivision (b), the defendant shall be advised prior to entry of a guilty or nolo contendre plea in substantially the following words:

> *"This plea agreement is subject to review and approval by the court after considering a pre-plea sentencing report and after hearing from any victim, immediate family member of the victim, or the next of kin of the victim. The prosecuting attorney shall make good faith efforts to notify the victim of the terms of the plea agreement, the date of judgment and sentencing, and the victim's right to speak at your sentencing. Prior to imposition of sentence upon you, the court will hear from any victim who desires to speak to the court about your case. If no victim is present at your sentencing, the court will ask the prosecuting attorney whether contact was made with the victim and for the victim's recommendation concerning your sentence. You will not be sentenced unless the victim has had an opportunity to give input regarding your sentence, unless the victim has waived his or her presence and right to be heard, or unless the court finds that further efforts at contacting the victim would be unsuccessful. If after hearing from the victim the court finds that the plea agreement is appropriate, you will be sentenced accordingly. If the court finds that the plea bargain is agreement is inappropriate, your guilty or no contest plea will be set aside, and you will have your right to trial and all of the other rights about which the court has advised you reinstated without prejudice to you."*

(d) The failure of the victim to be notified pursuant to this section or to appear at the judgment and sentencing of the defendant shall not be grounds for the defendant to move to set aside the plea.

SECTION 27.

Section 1192.52 is added to Chapter 1 of Title 8 of Part 2 of the Penal Code to read:

1192.52. (a) It is the intent of the People of the State of California in enacting this section to facilitate the rights of victims of crime specified in paragraphs (3) and (6) of subdivision (a) of Section 28 of Article I of the California Constitution to expect that persons who commit criminal acts will be appropriately detained in custody and to be informed about and to appropriately participate in proceedings involving the punishment and incarceration of their wrongdoers, and the right of victims of crime to be informed of the release or escape from custody of such persons, as provided in subparagraph (O) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution.

(b) Every institution in this state, including, but not limited to, institutions of the Department of Corrections and Rehabilitation, the Department of the Youth Authority, the Department of Mental Health, and the sheriff of each county, shall comply with the following with regard to the release of persons sentenced or committed to the institution arising out of a criminal proceeding:

(1) Except as provided in paragraph (2), the institution shall give notice to the victim, as defined in paragraph (5) of subdivision (b) of Section 28 of Article 1 of the California Constitution, of the following information: the full legal name, court case number, custodial identifying number, primary charge, bail status, if any, sentence imposed by the court, date of initial custody, date of earliest lawful release from custody, scheduled release date, parole hearing date, if any, and actual release if release has already occurred. This notice may be in written, electronic, or telephonic form.

(2) In lieu of providing actual notice to a victim as provided in paragraph (1), the institution may provide constructive notice to the victim by maintaining a computerized database containing the requisite information that is easily accessible to crime victims utilizing electronic means such as the internet.

(3) The institution shall file a report monthly with the office of the Attorney General and District Attorney of the counties it serves, the city attorney of each city it serves that performs the function of criminal prosecution, and the presiding judge in the court of each county it serves. The report shall consist of a complete listing of all of the persons described in this section that are housed in or released from the institution. The report shall contain the information described in paragraph (1). The report shall be delivered in both a written and electronic format and shall be maintained by each institution. The report shall be a public record and its data shall be made available to the public.

(c) Regulations implementing procedures for compliance with this Section shall be developed by the Department of Justice and the Department of Mental Health in consultation with the California State Sheriffs Association and the California Police Chiefs Association.

(c) The provisions of paragraph (3) of subdivision (b) shall become effective January 1, 2009.

(d) The provisions of paragraphs (1) and (2) of subdivision (b) shall become effective January 1, 2010.

SECTION 28.

Section 1240 of the Penal Code is amended to read:

1240. (a) When in a proceeding falling within the provisions of Section 15421 of the Government Code a person is not represented by a public defender acting pursuant to Section 27706 of the Government Code or other counsel and he *or she* is unable to afford the services of counsel, the court shall appoint the State Public Defender to represent the person except as follows:

(1) The court shall appoint counsel other than the State Public Defender when the State Public Defender has refused to represent the person because of conflict of interest or other reason.

(2) The court may, in its discretion, appoint either the State Public Defender or the attorney who represented the person at his trial when the person requests the latter to represent him on appeal and the attorney consents to the appointment. In unusual cases, where good cause exists, the court may appoint any other attorney.

(3) A court may appoint a county public defender, private attorney, or nonprofit corporation with which the State Public Defender has contracted to furnish defense services pursuant to Government Code Section 15402.

(4) When a judgment of death has been rendered the Supreme Court *or the court of appeal* may, in its discretion, appoint counsel other than the State Public Defender or the attorney who represented the person at trial.

(b) If counsel other than the State Public Defender is appointed pursuant to this section, he *or she* may exercise the same authority as the State Public Defender pursuant to Chapter 2 (commencing with Section 15420) of Part 7 of Division 3 of Title 2 of the Government Code.

SECTION 29.

Section 1240.1 of the Penal Code is amended to read:

1240.1. (a) In any noncapital criminal, juvenile court, or civil commitment case wherein the defendant would be entitled to the appointment of counsel on appeal if indigent, it shall be the duty of the attorney who represented the person at trial to provide counsel and advice as to whether arguably meritorious grounds exist for reversal or modification of the judgment on appeal. The attorney shall admonish the defendant that he or she is not able to provide advice concerning his or her own competency, and that the State Public Defender or other counsel should be consulted for advice as to whether an issue regarding the competency of counsel should be raised on appeal. The trial court may require trial counsel to certify that he or she has counseled the defendant as to whether arguably meritorious grounds for appeal exist at the time a notice of appeal is filed. Nothing in this section shall be construed to prevent any person having a right to appeal from doing so.

(b) It shall be the duty of every attorney representing an indigent defendant in any criminal, juvenile court, or civil commitment case to execute and file on his or her client's behalf a timely notice of appeal when the attorney is of the opinion that arguably meritorious grounds exist for a reversal or modification of the judgment or orders to be appealed from, and where, in the attorney's judgment, it is in the defendant's interest to pursue any relief that may be available to him or her on appeal; or when directed to do so by a defendant having a right to appeal.

With the notice of appeal the attorney shall file a brief statement of the points to be raised on appeal and a designation of any document, paper, pleading, or transcript of oral proceedings necessary to properly present those points on appeal when the document, paper, pleading, or transcript of oral proceedings would not be included in the normal record on appeal according to the applicable provisions of the California Rules of Court. The executing of the notice of appeal by the defendant's attorney shall not constitute an undertaking to represent the defendant on appeal unless the undertaking is expressly stated in the notice of appeal.

If the defendant was represented by appointed counsel on the trial level, or if it appears that the defendant will request the appointment of counsel on appeal by reason of indigency, the trial attorney shall also assist the defendant in preparing and submitting a motion for the appointment of counsel and any supporting declaration or affidavit as to the defendant's financial condition. These documents shall be filed with the trial court at the time of filing a notice of appeal, and shall be transmitted by the clerk of the trial court to the clerk of the appellate court within three judicial days of their receipt. The appellate court shall act upon that motion without unnecessary delay. An attorney's failure to file a motion for the appointment of counsel with the notice of appeal shall not foreclose the defendant from filing a motion at any time it becomes known to him or her that the attorney has failed to do so, or at any time he or she shall become indigent if he or she was not previously indigent.

(c) The State Public Defender shall, at the request of any attorney representing a prospective indigent appellant or at the request of the prospective indigent appellant himself or herself, provide counsel and advice to the prospective indigent appellant or attorney as to whether arguably meritorious grounds exist on which the judgment or order to be appealed from would be reversed or modified on appeal.

(d) The failure of a trial attorney to perform any duty prescribed in this section, assign any particular point or error in the notice of appeal, or designate any particular thing for inclusion in the record on appeal shall not foreclose any defendant from filing a notice of appeal on his or her own behalf or from raising any point or argument on appeal; nor shall it foreclose the defendant or his or her counsel on appeal from requesting the augmentation or correction of the record on appeal in the reviewing court.

(e) (1) In order to expedite certification of the entire record on appeal in all capital cases, the defendant's trial counsel, whether retained by the defendant or court-appointed, and the prosecutor shall continue to represent the respective parties. Each counsel's obligations extend to taking all steps necessary to facilitate the preparation and timely certification of the record of all trial court proceedings.

(2) The duties imposed on trial counsel in paragraph (1) shall not foreclose the defendant's appellate counsel from requesting additions or corrections to the record on appeal in ~~either~~ the trial court, *the court of appeal,* or the California Supreme Court in a manner provided by rules of court adopted by the Judicial Council.

SECTION 30.

Section 1247a is added to Chapter 1a of Title 9 of Part 2 of the Penal Code to read:

1247a. (a) It is the intent of the People of the State of California in enacting this Section to authorize and mandate sufficient resources for the Supreme Court and the courts of appeal to implement and carry out the amendments made by this initiative measure to Sections 11 and 12 of Article 6 of the California Constitution.

(b) (1) The Legislature and the Administrative Office of the Courts shall study and develop a plan for funding and resources necessary to implement and carry out the amendments made by this initiative to Sections 11 and 12 of Article VI of the California Constitution.

(2) This plan described in paragraph (1) shall be designed to provide that in every case in which a judgment of death has been pronounced on or prior to the effective date of this initiative measure, the appeal will be heard and decided no later than five years following the amendments made by this measure to Sections 11 and 12 of the California Constitution.

(c) The Judicial Council shall have the authority provided in Section 1247k to prescribe by rules the practice and procedure that in the discretion of the Judicial Council will provide the most efficient and effective implementation of the amendments made by this measure to Sections 11 and 12 of Article I of the California Constitution.

SECTION 31.

Section 1270 of the Penal Code is amended to read:

1270. (a) ~~Any~~ *Except as provided in subdivision (b), any* person who has been arrested for, or charged with, an offense ~~other than a capital offense~~ may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail, including a defendant arrested upon an out-of-county warrant. A defendant who is in custody and is arraigned on a complaint alleging an offense which is a misdemeanor, and a defendant who appears before a court or magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors, shall be entitled to an own recognizance release unless the court makes a finding on the record, in accordance with Section 1275, that an own recognizance release will compromise public safety, *the safety of the alleged victim or the family of the alleged victim,* or will not reasonably assure the appearance of the defendant as required. Public safety *and the safety of the crime victim and the crime victim's family* shall be the primary ~~consideration~~ *considerations*. If the court makes one of those findings, the court shall then set bail and specify the conditions, if any, ~~whereunder~~ *under which* the defendant shall be released.

(b) *No person shall be released on his or her own recognizance if any one of the following circumstances are true:*

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

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

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

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

(c) Article 9 (commencing with Section 1318) shall apply to any person who is released pursuant to this section.

SECTION 32.

Section 1270.1 of the Penal Code is amended to read:

1270.1. (a) Before any person who is arrested for any of the following crimes may be released on bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, *or less than the amount requested by the prosecuting attorney in a filed bail deviation request or motion,* ~~or may be released on his or her own recognizance,~~ a hearing shall be held in open court before the magistrate or judge:

(1) A serious felony, as ~~defined~~ *described* in subdivision (c) of Section 1192.7, or a violent felony, as ~~defined~~ *described* in subdivision (c) of Section 667.5~~, but not including a violation of subdivision (a) of Section 460 (residential burglary)~~.

(2) A violation of Section 136.1 where punishment is imposed pursuant to subdivision (c) of Section 136.1, 262, 273.5, 422 where the offense is punished as a felony, or 646.9.

(3) A violation of paragraph (1) of subdivision (e) of Section 243.

(4) A violation of Section 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(5) A felony alleged to have been committed while the defendant was on parole or probation.

(6) A felony alleged to have been committed while the defendant was released from custody on bail or on own recognizance on another offense.

(b) The prosecuting attorney, *the alleged victim of the crime, or next of kin if the victim is deceased,* and *the* defense attorney shall be given a two court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.

(c) At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons, *including the alleged victim of the crime and the family of the crime victim,* if the detained person is released. In making the determination whether to

~~release the detained person on his or her own recognizance~~ *reduce bail below the amount contained in the schedule of bail or the amount requested by the prosecuting attorney in a bail deviation request or motion*, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

(d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, the judge or magistrate shall state the reasons for that decision and shall address the issue of threats made against the victim or witness, if they were made, in the record. This statement shall be included in the record.

SECTION 33.

Section 1272 of the Penal Code is amended to read:

1272. After conviction of an offense not punishable with death, a defendant who has made application for probation or who has appealed may be admitted to bail:

1. As a matter of right, before judgment is pronounced pending application for probation in cases of misdemeanors, or when the appeal is from a judgment imposing a fine only.
2. As a matter of right, before judgment is pronounced pending application for probation in cases of misdemeanors, or when the appeal is from a judgment imposing imprisonment in cases of misdemeanors.
3. As a matter of discretion in all other cases, except that a person convicted of an offense subject to this subdivision, who makes a motion for release on bail subsequent to a sentencing hearing, shall provide notice of the hearing on the bail motion to the prosecuting attorney *and to the victim of the crime, or next of kin,* at least five court days prior to the hearing. *If the person convicted of the offense does not know the address of the crime victim, the moving party shall provide the notice for the crime victim to the prosecuting attorney, who shall then provide the notice to the crime victim.*

SECTION 34.

Section 1272.1 of the Penal Code is amended to read:

1272.1. Release on bail pending appeal under subdivision (3) of Section 1272 shall be ordered by the court if the defendant demonstrates all the following:

(a) By clear and convincing evidence, the defendant is not likely to flee. Under this subdivision the court shall consider the following criteria:

(1) The ties of the defendant to the community, including his or her employment, the duration of his or her residence, the defendant's family attachments and his or her property holdings.

(2) The defendant's record of appearance at past court hearings or of flight to avoid prosecution.

(3) The severity of the sentence the defendant faces.

(b) By clear and convincing evidence, the defendant does not pose a danger to the safety of any other person, *specifically including the victim of the crime or the family of the crime victim,* or to the community.

Under this subdivision the court shall consider, among other factors, whether the crime for which the defendant was convicted is a violent felony, as ~~defined~~ *described* in subdivision (c) of Section 667.5, *or a serious felony, as described in subdivision (c) of Section 1192.7, whether the defendant is on parole or probation for another offense, and whether the defendant was free on own recognizance or bail at the time of the alleged commission of the offense.*

(c) The appeal is not for the purpose of delay and, based upon the record in the case, raises a substantial legal question which, if decided in favor of the defendant, is likely to result in reversal.

For purposes of this subdivision, a "substantial legal question" means a close question, one of more substance than would be necessary to a finding that it was not frivolous. In assessing whether a substantial legal question has been raised on appeal by the defendant, the court shall not be required to determine whether it committed error.

In making its decision on whether to grant defendants' motions for bail under subdivision (3) of Section 1272, the court shall include a brief statement of reasons in support of an order granting or denying a motion for bail on appeal. The statement need only include the basis for the order with sufficient specificity to permit meaningful review.

SECTION 35.

Section 1274 of the Penal Code is amended to read:

1274. When the admission to bail is a matter of discretion, the Court or officer to whom the application is made must require reasonable notice thereof to be given to the District Attorney of the county *and to the victim of the alleged crime*.

SECTION 36.

Section 1274.5 is added to Article 1 of Chapter 1 of Title 10 of Part 2 of the Penal Code to read:

1274.5. No person charged with murder or attempted murder, or any other offense carrying a potential life sentence, shall be released on bail unless the officer with custody of the accused person has first made reasonable efforts to notify the alleged victim of the crime or the family of the crime victim of the impending release of the accused. The prosecuting attorney shall upon request provide the contact information of the victim or the family of the victim to the officer with custody of the accused person.

SECTION 37.

Section 1275 of the Penal Code is amended to read:

1275. (a) *(1)* In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, *the protection of the crime victim and the crime victim's family from harm and threats of harm arising from cooperation with prosecution efforts throughout the criminal or juvenile justice process,* and the probability of ~~his or her~~ *the defendant's* appearing at trial or hearing of the case. The public safety *and the safety of the crime victim and the crime victim's family* shall be the primary ~~consideration~~ *considerations*.

(2) In considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim, *the family of the victim,* or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

(b) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.

(c) Before a court reduces bail below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as ~~defined~~ *described* in subdivision (c) of Section 1192.7, or a violent felony, as ~~defined~~ *described* in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, "unusual circumstances" does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

SECTION 38.

Section 1382.1 is added to Chapter 8 of Part 10 of Title 2 of the Penal Code to read:

1382.1. (a) It is the intent of the People of the State of California in enacting this Section to preserve and advance the right of victims of crime specified in paragraph (3) of subdivision (a) of Section 28 of Article I of the California Constitution to expect that persons who commit criminal acts will be expeditiously brought before and tried by the courts, and not dismissed prior to the last day on which the case may be brought to trial pursuant to Section 1382, and to advance the right of victims of crime specified in subparagraph (N) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to a speedy and prompt final conclusion of the case.

(b) Notwithstanding the provisions of Section 1382, no court shall dismiss an information or indictment pursuant to Section 1382 or any other provision of law in any felony case in which

(1) the defendant has not waived time for trial and the People request the court to set the trial or to continue the trial to a date that is within 60 days of an event described in paragraph (2) of subdivision (a) Section 1382;

(2) the defendant has entered a general waiver of time for trial and the People request the court to set the trial or to continue the trial to a date that is within 60 days of an event described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1382; or

(3) the defendant has requested or consented to the setting of a trial date beyond the 60 day period described in paragraph (2) of subdivision (a) of Section 1382 and the People request the court to set the trial or to continue the trial to a date that is within 10 days of an event described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1382.

(c) Notwithstanding the provisions of Section 1382, no court shall dismiss a complaint pursuant to Section 1382 or any other provision of law in any misdemeanor case in which

(1) the defendant is in custody and has not waived time for trial, and the People request the court to set the trial or to continue the trial to a date that is within 30 days of an event described in paragraph (3) of subdivision (a) Section 1382;

(2) the defendant is not in custody and has not waived time for trial, and the People request the court to set the trial or to continue the trial to a date that is within 45 days of an event described in paragraph (3) of subdivision (a) of Section 1382;

(3) the defendant has entered a general waiver of time for trial and the People request the court to set the trial or to continue the trial to a date that is within 30 days of an event described in subparagraph (A) of paragraph (3) of subdivision (a) of Section 1382;

(4) the defendant has requested or consented to the setting of a trial date beyond the periods described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1382, and the People request the court to set the trial or to continue the trial to a date that is within 10 days of an event described in that subparagraph (B) of paragraph (3) of subdivision (a) of Section 1382.

(d) A good cause showing as required by Section 1050 shall not apply to a request by the People to continue a trial to another date within the time periods specified in subdivisions (b) and (c).

(e) If the court continues or trails a trial during the 10-day period described in paragraph (3) of subdivision (b) or in paragraph (4) of subdivision (c) at the motion or direction of the court to accommodate court congestion or administrative needs of the court, the period of time attributable to the continuance or trailing shall not be deemed to count against the 10-day period described herein.

SECTION 39.

Section 1473.1 is added to Chapter 1 of Title 12 of Part 2 of the Penal Code to read:

1473.1. (a) In any proceeding held pursuant to this chapter in which the court enters or has entered a discovery order requiring the respondent to make disclosures to the petitioner, the court shall enter an order requiring the petitioner and his or her attorney to disclose to the respondent and his or her attorney:

(1) The names and addresses of persons, other than the petitioner, he or she intends to call as witnesses at any proceeding on the petition, together with any relevant oral, written, or recorded statements of those persons, or oral, written, or recorded reports of the statements of those persons, including any oral, written, or recorded reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the petitioner intends to offer in evidence at the proceeding; and

(2) Any real evidence which the petitioner intends to offer in evidence at the proceeding.

(b) Every discovery order issued pursuant to this section shall be reciprocal. No order shall be issued requiring a disclosure by the petitioner that is not also required of the respondent.

(c) Nothing in this section shall be construed to limit the power of the court to issue discovery orders requiring the petitioner and the respondent to disclose non-privileged evidence or information that is relevant to the habeas petition and that is not listed in subdivision (a).

SECTION 40.

Section 1474.5 is added to Chapter 1 of Title 12 of Part 2 of the Penal Code to read:

Sec. 1474.5. (a) It is the intent of the People of the State of California in enacting this section to facilitate the right of victims of crime specified in
paragraph (3) of subdivision (a) of Section 28 of Article I of the California Constitution to expect that persons who commit *criminal* acts will be sufficiently punished *in an expeditious manner, so that punishment retains its deterrent effect* and the public safety is protected and encouraged.

(b) No order requiring discovery from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency has employed to assist them in performing their duties, shall be issued pursuant to this chapter with respect to a petition for postconviction relief which has not been filed or with respect to a claim for postconviction relief which does not state a prima facie case for relief and upon which the court has not issued an order to show cause. Upon the request of petitioner the court may issue an order requiring discovery with respect to issues upon which the petition states a prima facie case for relief.

(c) A court which issues an order requiring discovery pursuant to subdivision (b) shall upon request of the habeas respondent issue a reciprocal discovery order relevant to the petitioner's prima facie case for relief. The court may utilize the requirements of Section 1054.3 as a reference in fashioning the reciprocal discovery order.

SECTION 41.

Section 1546 is added to Chapter 4 of Title 12 of Part 2 of the Penal Code to read:

1546. (a) It is the intent of the People of the State of California in enacting this section to facilitate the right of victims of crime specified in paragraph (3) of subdivision (a) of Section 28 of Article I of the California Constitution to expect that persons who commit criminal acts will be brought before the courts of this State.

(b) Whenever a district attorney is notified that a person for whom a warrant of arrest has issued for the commission of a violent felony, as described in subdivision (c) of Section 667.5, for the commission of a serious felony, as described in subdivision (c) of Section 1192.7, for the commission of any felony for which the aggravated term of imprisonment is four years or more in state prison, or for the commission of any felony for which bail has been set in California at $50,000.00 or more, has been arrested outside the jurisdictional territory of the State of California, the district attorney shall make written application to the Governor pursuant to Section 1554.2 for a requisition for the return of the person charged.

(c) If the district attorney declines to make written application to the Governor pursuant to Section 1554.2 for the return of any person not described in subdivision (b), the district attorney shall notify the victim of the decision and afford the victim an opportunity to meet with the prosecuting attorney who has declined to request extradition.

(d) The district attorney shall maintain a written record of all notifications of arrest described in subdivision (b) for which the district attorney does not make application to the Governor for a requisition for the return of the person charged. The written record shall contain the name of the fugitive, the docket number of the underlying charges in California, the date and place of the arrest of the fugitive in the foreign jurisdiction, the bail set for the fugitive in the foreign jurisdiction, and the reason or reasons the district attorney declined to seek the requisition of the Governor for the return of the fugitive. This record, and the record of the request for or waiver of the extradition by the victim, shall be deemed a public record as defined in the California Public Records Act, Article I of Chapter 3.5 of Division 7 of Title 1 of the Government Code.

SECTION 42.

Section 2602 is added to Chapter 3 of Title 1 of Part 3 of the Penal Code to read:

2602. (a) It is the intent of the People of the State of California in enacting this statute to implement and effectuate the rights of victims of crime guaranteed in paragraph (4) of subdivision (a) of Section 28 of Article I of the California Constitution and in subparagraph (N) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to expect that a criminal wrongdoer will be sufficiently punished, and that the punitive and deterrent effect of incarceration will not be undercut or diminished by the granting of comforts, privileges, or other rights to incarcerated criminal wrongdoers that are not required by any provision of the United States Constitution or the current laws of the State of California. It is the further intent of the People of the State of California in enacting this statute to ensure that the granting of comforts, privileges, or other rights to incarcerated wrongdoers does not divert resources required to meet the State's primary obligation to provide adequate facilities and personnel to incarcerate criminal wrongdoers for the full terms of their sentences.

(b) (1) Notwithstanding any other provision of law, and except as provided in Section 2601 as of January 1, 2008, no persons confined in a state prison or any other facility arising out of a criminal proceeding shall be entitled to any right, privilege, or comfort, no matter how described, that the Constitution of the United States and the laws of the State of California do not require be granted to such persons.

(2) Notwithstanding any other provision of law, no person confined in a state prison or any other facility under the jurisdiction of the Department of Corrections and Rehabilitation shall be granted, receive, or participate in a overnight family visit, a conjugal visit, or any other such visit however titled, while so confined as a result of a felony conviction for:

(A) a violent offense involving a minor or a family member, including but not limited to, Section 187, 192, 203, 205, 206, 207, 209, 209.5, 210, 210.5, 211, 215, 220, 236, 236.1, 244, 245, 246, 273a, 273ab, 273d, 273.5, or 273.6 of the Penal Code;

(B) a sexual assault, including but not limited to, Section 243.4, 261, 261.5, 262, 264.1, 266c, 266j, 285, 286, 288, 288a, 288.2, 288.5, 289, or 289.5 of the Penal Code, and any other registerable sex offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290;

(C) sexual exploitation or molestation of a child, including but not limited to, Section 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 314, or 647.6 of the Penal Code.

(3) Notwithstanding any other provision of law, none of the following persons confined in a state prison or any other facility under the jurisdiction of the Department of Corrections and Rehabilitation shall be granted, receive, or participate in a overnight family visit, a conjugal visit, or any other such visit however titled, while so confined:

(A) an inmate designated as a condemned inmate;

(B) an inmate sentenced to life imprisonment without the possibility of parole;

(C) an inmate sentenced to life imprisonment without a parole date established by the Board of Parole Hearings;

(D) an inmate designated as Close A or Close B custody;

(E) an inmate assigned to a reception center;

(F) an inmate assigned to an administrative segregation unit;

(G) an inmate assigned to a security housing unit;

(H) an inmate designated "C" status;

(I) an inmate convicted of one or more Division A or Division B offense(s) within the preceding twelve months; or

(J) an inmate convicted of illegal drugs or narcotics distribution while incarcerated in a state prison.

(4) Nothing in this section shall be construed to grant to any inmate confined in a facility under the jurisdiction of the Department of Corrections and Rehabilitation as a result of a conviction of an offense not listed or described in paragraphs (2) and (3) the right to an overnight family visit, conjugal visit, or any other visit in which the inmate could have physical contact with a minor. The Director of the Department of Corrections and Rehabilitation, or his or her designee, shall have the discretion to grant or deny such a visit to any inmate described in this paragraph.

(c) Except as provided in paragraphs (2) and (3) of subdivision (b), the Director of the Department of Corrections and Rehabilitation, or his or her designee, shall be authorized to grant or to deny, in his or her discretion, to persons confined in a state prison facility any right or privilege not required to be granted by the Constitution of the United States or the laws of the State of California. In determining whether to grant a right or privilege not required to be granted by the Constitution of the United States or the laws of the State of California, the Director or his or her designee shall be guided by the declaration of policy in paragraph (1) of subdivision (a) of Section 1170 that the purpose of imprisonment for crime is punishment.

(d) (1) It shall be a primary responsibility of the Director of the Department of Corrections and Rehabilitation to see that resources appropriated by the Legislature to the Department are used to ensure that sentences imposed upon persons committed to the Department are carried out, and that no early release of inmates occurs due to inadequate space to house them or staff to supervise and secure their safe detention.

(2) In the event that the governor or a federal or state court finds that the inmate population of any institution or facility under the jurisdiction of the Department exceeds its lawful capacity, or a federal or state court orders that inmates be released from custody due to inadequate space to house them, the Director shall suspend all inmate privileges that are not guaranteed to inmates by the Constitution of the United States and the laws of the State of California, and shall reallocate resources to the primary responsibility of the Department to provide adequate space to house all inmates for the full terms of their sentences.

SECTION 43.

Section 2914 is added to Chapter 7 of Title 1 of Part 3 of the Penal Code to read:

2914. (a) In order to preserve the rights of California's victims of crime as guaranteed by Section 28 of Article I of the California Constitution, and notwithstanding Sections 2911, 2912, or any other provision of law, no state or county officer shall enter into an agreement with any official of a jurisdiction outside the state of California whereby an accused charged in California with the commission of a violent felony, as described in subdivision (c) of Section 667.5, or a serious felony, as described in subdivision (c) of Section 1192.7, alleged to have occurred within the territorial jurisdiction of the State of California, is permitted to be charged, tried, sentenced, or incarcerated, or permitted to enter a guilty or no contest plea, in that foreign jurisdiction.

(b) This provisions of subdivision (a) shall not apply to any case in which the crime victim or the family of the crime victim, following an advisement by the court that the rights of crime victims secured in this State would not necessarily be recognized in the foreign jurisdiction, gives consent on the record and reflected in the minutes of the court that the defendant be charged, tried, sentenced, or incarcerated, or permitted to enter a guilty or no contest plea, in a foreign jurisdiction.

SECTION 44.

Section 3041 of the Penal Code is amended to read:

3041. (a) *(1)* In the case of any inmate sentenced pursuant to any provision of law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of *Adult* Parole Hearings shall meet with each inmate during the third year of incarceration for the purposes of reviewing the inmate's file, making recommendations, and documenting activities and conduct pertinent to granting or withholding postconviction credit.

(2) One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate. ~~and shall normally set a parole release date as provided in Section 3041.5.~~ No more than one member of the panel shall be a deputy commissioner. In the event of a tie vote, the matter shall be referred for an en banc hearing by the board. *If the panel, or in the event of a tie vote the board, sets a release date, the* ~~The~~ release date shall be set in a manner that will provide uniform terms for *offenders and their* offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates.

(3) The board shall be guided by the presumption that the term to be served by the inmate is life in prison. The board shall establish *and consider relevant* criteria for *determining whether the presumption that the inmate shall serve a life term is overcome and that the inmate should be released on parole prior to his or her death.* ~~the setting of parole release dates and in doing so~~ *In determining whether the inmate should be released on parole prior to his or her death, the board* shall consider the *following factors: the facts of the commitment crimes, the facts of the inmate's prior felony convictions, the danger that the release of the inmate would pose to the community, the inmate's entire criminal history, including the inmate's performance on grants of parole and probation, the* number of victims of the crimes for which the inmate was sentenced, *the impacts upon the victims of the inmate's commitment crimes and the inmate's prior felony convictions,* and other factors in mitigation or aggravation of the *commitment crimes* ~~crime~~ *and of the inmate's prior felony convictions, the inmate's history of drug and alcohol use and addiction, the inmate's work history, the psychological and psychiatric evaluations of the inmate while incarcerated, the performance and conduct of the inmate while incarcerated, the fact and details of any disciplinary finding or criminal conduct by the inmate since incarcerated, and any other relevant criteria contained in Rule 4.421 and Rule 4.423 of the California Rules of Court.*

(4) Notwithstanding the provisions of paragraph (3), the board in its discretion may decline to release the inmate on parole based solely on the facts of the commitment crime of the inmate, the facts of the prior felony convictions of the inmate, the entire criminal history of the inmate, or any other individual factor or combination of factors that suggest that the inmate would pose an unreasonable risk of danger to society or to the family of the victim of the inmate's crime if released.

(5) Neither the board nor a panel of the board shall exclude reasonably reliable evidence from any source that bears upon the risk of danger which the release of the inmate might pose.

(6) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting.

(b) Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a *two-thirds* ~~majority~~ vote in favor of parole by the board members participating in an en banc hearing is required to grant parole to any inmate.

~~(b)~~ *(c)* The panel or the board, sitting en banc, shall *consider and be guided by the criteria for the setting of parole release dates set forth in subdivision (a)* ~~set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting. After the effective date of this subdivision, any~~. *Any* decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall

consult with the commissioners who conducted the parole consideration hearing. No decision of the parole panel shall be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public hearing.

~~(c)~~ *(d)* For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

~~(d)~~ *(e)* It is the intent of the ~~Legislature~~ *People* that during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

~~(e)~~ *(f)* For purposes of this section, an en banc hearing by the board means a hearing conducted by a committee of nine randomly selected commissioners who are specifically appointed to hear adult parole matters, selected by the chairperson. The committee shall be comprised of a majority of commissioners holding office on the date the matter is heard by the committee.

SECTION 45.

Section 3041.1 of the Penal Code is amended to read:

3041.1. Up to 90 days prior to a scheduled release date, the Governor may request review of any decision by a parole authority concerning the grant or denial of parole to any inmate in a state prison. The Governor shall state the reason or reasons for the request, and whether the request is based on a public safety concern, a concern that the *criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041* ~~gravity of current or past convicted offenses may~~ have been given inadequate consideration, or on other factors. When a request has been made, a randomly selected committee comprised of nine commissioners specifically appointed to hear adult parole matters and who are holding office at the time, shall review the parole decision. In case of a review, a vote in favor of parole by a *two-thirds* majority of the commissioners on the committee shall be required to grant parole to any inmate. In carrying out any review, the board shall comply with the provisions of this chapter.

SECTION 46.

Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf. *Neither the prisoner nor the attorney for the prisoner shall be entitled to ask questions of any person appearing at the hearing pursuant to subdivision (b) of Section 3043.*

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner *and any person described in subdivision (b) of Section 3043* shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(6) The board shall set a date to reconsider whether an inmate should be released on parole that ensures a meaningful consideration whether the inmate is suitable for release on parole.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set ~~for the reasons stated in subdivision (b) of Section 3041~~, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

(3) ~~The board shall hear each case annually thereafter, except the~~ *The* board ~~may~~ *shall* schedule the next hearing ~~no later than the following~~ *as follows*:

(A) ~~Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.~~ *Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public safety does not require a more lengthy period of incarceration for the prisoner than ten additional years.*

(B) ~~Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years.~~ *Ten* years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that *the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public safety does not require a more lengthy period of incarceration for the prisoner than seven additional years.*

(C) Three years, five years, or seven years after any hearing at which parole is denied, because the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public safety requires a more lengthy period of incarceration for the prisoner, but does not require a more lengthy period of incarceration for the prisoner than seven additional years.

~~(3)~~ *(4) The board may in its discretion advance a hearing set pursuant to subparagraph (a) or (b) of paragraph (3) to an earlier date, when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the prisoner provided in subparagraph (a) or (b) of paragraph (3).*

(5) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

~~(4)~~ *(6)* Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing ~~within 12 months and~~ in accordance with paragraph (2).

(c) The board shall conduct a parole hearing pursuant to this section as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in paragraph (3) of subdivision (a) of section 3041.

(d) (1) An inmate may request that the board exercise its discretion to advance a hearing set pursuant to paragraph (3) of subdivision (b) to an earlier date, by submitting a written request to the board which shall set forth the change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate.

(2) The board shall have sole jurisdiction to determine whether to grant or deny a written request made pursuant to paragraph (1), and its decision shall be subject to review by a court or magistrate only for a manifest abuse of discretion by the board. The board shall have the power to summarily deny a request that does not comply with the provisions of this subdivision or that does not set forth a change in circumstances or new information as required in paragraph (1) that in the judgment of the board is sufficient to justify the action described in paragraph (4) of subdivision (b).

(3) An inmate may make only one written request as provided in paragraph (1) during each three year period. Following either a summary denial of a request made pursuant to paragraph (1), or the decision of the board after a hearing described in subdivision (a) to not set a parole date, the inmate shall not be entitled to submit another request for

a hearing pursuant to subdivision (a) until a three-year period of time has elapsed from the summary denial or decision of the board.

SECTION 47.

Section 3041.7 of the Penal Code is amended to read:

Sec. 3041.7. *(a)* At any hearing for the purpose of setting, postponing, or rescinding a parole release date of a prisoner under a life sentence, the prisoner shall be entitled to be represented by counsel and the provisions of Section 3041.5 shall apply. The Board of *Adult* Parole Hearings shall provide by rule for the invitation of the prosecutor of the county from which the prisoner was committed, or his *or her* representative, to represent the interests of the ~~people~~ *People* at the hearing. The Board of *Adult* Parole Hearings shall notify the prosecutor and the Attorney General at least ~~30~~ *90* days prior to the date of the hearing.

(b) Notwithstanding Section 12550 of the Government Code, the prosecutor of the county from which the prisoner was committed, or his *or her* representative, who shall not be the Attorney General, except in cases in which the Attorney General prosecuted the case at the trial level, shall be the sole representative of the interests of the ~~people~~ *People*.

SECTION 48.

Section 3043 of the Penal Code is amended to read:

Sec. 3043. (a) *(1)* Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of ~~Prison Terms~~ *Adult Parole Hearings* at least ~~30~~ *90* days before the hearing to any victim of ~~a~~ *any* crime committed by the prisoner, or to the next of kin of the victim if the victim has died, *to include the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, and any other felony crimes or crimes against the person for which the prisoner has been convicted.* The requesting party shall keep the board apprised of his or her current mailing address.

(2) No later than 30 days prior to the date selected for the hearing, any person entitled to attend the hearing shall inform the Board of Adult Parole Hearings of his or her intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany him or her.

(3) No later than 14 days prior to the date selected for the hearing, the Board of Adult Parole Hearings shall notify every person entitled to attend the hearing confirming the date, time, and place of the hearing.

(b) *(1)* The victim, next of kin, ~~two~~ members of the victim's ~~immediate~~ family, ~~or~~ *and* two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin in writing prior to the hearing have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his, her, or their views concerning *all facts known to the victim or the family of the victim about the prisoner and the case, including, but not limited to* the *commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, any other felony crimes or crimes against the person for which the prisoner has been convicted, the effect of the enumerated crimes on the victim and the family of the victim,* ~~crime and~~ the person responsible *for these enumerated crimes, and the suitability of the prisoner for parole* ~~except that any~~.

(2) Any statement provided by a representative designated by the victim or next of kin *may cover any subject about which the victim or next of kin have the right to speak* ~~shall be limited to comments concerning the effect of the crime on the victim~~.

(c) A representative designated by the victim or the victim's next of kin for purposes of this section *may be any adult person selected by the victim or the family of the victim* ~~must be either a family or household member of the victim~~. The board ~~may not~~ *shall* permit a representative designated by the victim or the victim's next of kin to *attend a particular hearing, to* provide testimony at a hearing, ~~or~~ *and* to submit a statement to be included in the hearing as provided in Section 3043.2, *even though* ~~if~~ the victim, next of kin, or a member of the victim's immediate family is present at the hearing, ~~or if~~ *and even though* the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in
Section 3043.2.

(d) ~~Nothing in this section is intended to allow the board to permit a victim's representative to attend a particular hearing if the victim, next of kin, or a member of the victim's immediate family is present at any hearing covered in this section, or if the victim, next of kin, or member of the victim's immediate family has submitted a written, audiotaped, or videotaped statement.~~

~~(c)~~ The board, in deciding whether to release the person on parole, shall consider the *entire and uninterrupted* statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement ~~of~~ whether the person would pose a threat to public safety if released on parole.

(e) In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board ~~may, in its discretion,~~ *shall* allow attendance of additional immediate family members ~~or limit attendance to the following order of preference:~~ *to include the following:* spouse, children, parents, siblings, grandchildren, and grandparents.

~~The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.~~

SECTION 49.

Section 3043.2 of the Penal Code is amended to read:

3043.2. (a) (1) In ~~lieu of~~ *addition to a* personal appearance at any hearing to review the parole suitability or the setting of a parole date, the Board of Prison Terms shall permit the victim, his or her next of kin, immediate family members, or two representatives designated for a particular hearing by the victim or next of kin in writing prior to the hearing to file with the board a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium accepted by a court pursuant to Section 1191.15 or by the board, expressing his or her views concerning the crime and the person responsible, *and all facts known to the victim.* The statement may be personal messages from the person to the board made at any time or may be a statement made pursuant to Section 1191.16, or a combination of both. ~~, except that any~~ *Any* statement provided by a representative designated by the victim or next of kin ~~shall be limited to comments concerning the effect of the crime on the victim~~ *may cover any subject about which the victim or next of kin have the right to speak.*

(2) A representative designated by the victim or the victim's next of kin for purposes of this section ~~must be either a family or household member of the victim~~ *may be any adult person selected by the victim or the next of kin of the victim.*

(3) The board shall consider any statement filed prior to reaching a decision, and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

(b) Whenever an audio or video statement or a statement stored on a CD Rom, DVD, or other *recording* medium is filed with the board, a written transcript of the statement *may but need not* ~~shall also~~ be provided by the person filing the statement.

(c) Nothing in this section shall be construed to prohibit the prosecutor from representing to the board the views of the victim, his or her immediate family members, or next of kin.

(d) In the event the ~~board permits~~ *victim, his or her next of kin, immediate family members, or two representatives designated for a particular hearing by the victim or next of kin wishes to file* an audio or video statement or statement stored on a CD Rom, DVD, or other *recording* medium ~~to be filed~~, the board shall not be responsible for providing any equipment or resources needed to assist ~~the victim~~ *that person* in preparing the statement.

SECTION 50.

Section 3043.4 is added to Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code, to read:

3043.4 (a) The board shall arrange with the institution that every hearing held pursuant to this chapter shall take place in a room which accommodates all persons who attend pursuant to subdivision (b) of Section 3043. In the event that the Board of Adult Parole Hearings determines that the number of persons intending to attend the hearing held pursuant to this chapter exceeds the capacity of the largest room available for that purpose in the institution where the hearing is to be held, the board shall arrange with the institution for a supplemental room into which a video feed of the hearing can be transmitted. The video feed shall be a two-way feed to allow persons in the supplemental room to make a statement or presentation to the panel as authorized by Section 3043.2.

(b) Not later than January 1, 2010, the board shall implement video conferencing technology by which persons entitled to attend a hearing pursuant to this chapter, including but not limited to the representative of the People as described in Section 3041.7, but who are unable to attend in person, will be able to view and participate in the hearing.

SECTION 51.

Section 3043.5 of the Penal Code is amended to read:

3043.5. ~~(a) This section shall be known as the "Condit-Nolan Public Participation in Parole Act of 1984."~~

~~(b)~~ Any person interested in the grant or denial of parole to any prisoner in a state prison shall have the right to submit a statement of views in support of or in opposition to the granting of parole. The board, in deciding whether to release the person on parole, shall review all information received from the public to ~~insure~~ *ensure* that *all of the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041, including* the gravity and timing of all current or past convicted offenses, have been given adequate consideration and to ~~insure~~ *ensure* that the safety of the public has been adequately considered. Upon completion of its review, the board shall include in its report a statement that it has reviewed all information received from the public and its conclusion as to whether the person would pose a threat to the public safety if released on parole.

SECTION 52.

Section 3043.6 of the Penal Code is amended to read:

3043.6. *(a)* Any person authorized to appear at a parole hearing pursuant to Section 3043, or a prosecutor authorized to represent the views of the victim, his or her immediate family, or next of kin, pursuant to Section 3043.2, shall have the right to speak last before the board in regard to those persons appearing and speaking before the board at a parole hearing.

(b) Except under extraordinary circumstances, the panel or the board shall not interrupt any person or the presentation of any person authorized to appear at a parole hearing, nor shall the panel or the board limit the time of that person to speak or otherwise present his or her views.

(c) Nothing in this section shall prohibit the person presiding at the hearing from taking any steps he or she deems appropriate to ensure *the decorum of the proceeding. To ensure* that only accurate and relevant statements are considered in determining parole suitability as provided in law, *the person presiding at the hearing shall give the representative of the People and counsel for the prisoner an opportunity to rebut inaccurate statements made by any person.* ~~including, but not limited to, the rebuttal of inaccurate statements made by any party.~~

(d) The person presiding at the hearing shall report to the board in writing each instance in which the panel has limited the time to speak and present views or has limited the subject matter of any person authorized to appear before a parole board hearing.

SECTION 53.

Section 3043.7 is added to Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code to read:

3043.7. *(a) No duly noticed and ~~schedule~~ scheduled parole hearing described in Section 3041 shall be postponed at the request of the prisoner for reasons of the prisoner's medical or psychiatric condition, unless the board is presented with a certificate signed by a physician certifying that by virtue of the prisoner's medical or psychiatric condition the prisoner would be unable to meaningfully participate in the hearing or to provide meaningful assistance to his or her attorney in the conduct of the hearing.*

(b) If a victim, victim's representative, or next of kin appears for a duly noticed, scheduled parole hearing, and that hearing is postponed at the request of the prisoner or the prisoner's attorney, the board shall allow the victim, victim's representative, or next of kin to make his or her statement and presentation at the time the postponement is granted. If the victim, victim's representative, or next of kin makes the statement and presentation directly and in person to the board on the date the postponement is granted, the statement shall be recorded in video, audio and or in writing as requested by the victim or other person so entitled. The statement and presentation shall not be in lieu of any other statement or presentation presented at the time the postponed hearing is actually held.

(c) (1) On the day a hearing is continued or postponed the victim or other person entitled to make a statement may make a statement or presentation in writing or in any other medium directly to the board or otherwise have the statement recorded and preserved for later consideration at the subsequent hearing. This statement or presentation shall be

recorded and preserved for introduction into the record when the parole hearing is subsequently held. The statement or presentation shall not be read, heard, or viewed by the board prior to the hearing.

(2) Any statement or presentation previously recorded and preserved at the originally scheduled hearing shall, at the request of the proponent of the statement or presentation, be introduced into the record or otherwise considered by the board without limitation. If the victim, victim's representative, or next of kin attends the postponed hearing in person, he or she may make an additional oral statement or presentation directly to the board.

SECTION 54.

Section 3044 is added to Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code, to read:

3044. (a) (1) It is the intent of the People of the State of California in enacting this section to facilitate the rights of victims of crime specified in paragraph (2) of subdivision (a) and subparagraph (A) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to be treated with fairness and respect for their dignity and privacy, and to be free from intimidation, harassment, and abuse throughout the criminal and juvenile justice process, including parole revocation proceedings.

(2) It is the further intent of the People in enacting this section that no person who is paroled from a California correctional facility following incarceration for an offense committed on or after the effective date of this measure, and whose parole is revoked, shall be entitled to procedural rights other than those required by the Constitution of the United States or as enumerated in subdivision (b).

(b) Notwithstanding any other law, the Board of Adult Parole Hearings, or its successor in interest, as the state parole authority, and its hearing officers shall conduct parole revocation hearings in a manner consistent with constitutional requirements. Accordingly, any person paroled from a California correctional facility following incarceration for an offense committed on or after the effective date of this Act, who is subject to a revocation of his or her parole is revoked, shall be entitled to procedural rights as follows:

(1) A parolee shall be entitled to a probable cause hearing no later than 15 days following his or her arrest for violation of parole.

(2) A parolee shall be entitled to an evidentiary revocation hearing no later than 45 days following his or her arrest for violation of parole.

(3) A parolee shall, upon request, be entitled to counsel at state expense, if, considering the request on a case-by-case basis, the board, or its hearing officer or officers determine that the parolee is indigent and considering the complexity of the charges or the defense, or because of the parolee's mental or educational incapacity, he or she spears incapable of speaking effectively in his or her own defense.

(4) In the event the parolee's request for counsel is denied, the grounds for denial shall be stated succinctly in the record.

(5) Parole revocation determinations shall be based upon a preponderance of evidence admitted at hearings including documentary evidence, direct testimony, or reliable hearsay evidence.

(6) Admission of the recorded or hearsay statement of a victim or percipient witness shall not be construed to create a right to confront the declarant at the parole revocation hearing.

(c) The board is entrusted with the safety of the public and shall make its determination fairly, independently, and without bias, and shall not be influenced by or weigh the state cost or burden associated with just decisions. The board must accordingly enjoy sufficient autonomy to conduct unbiased hearings and maintain an independent legal and administrative staff. The board shall report to the Governor.

(d) No later than April 15, 2009, the State Auditor shall conduct an audit of the costs associated with a fiscally and institutionally independent board and report its findings to the Governor and the Department of Finance.

(e)The Department of Finance shall include a budget item to fund the board for the 2009-2010 fiscal year and each year thereafter to be adjusted for cost of living changes pursuant to the California Consumer Price Index.

SECTION 55.

Section 3073.1 is added to Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code to read:

3073.1. (a) It is the intent of the People of the State of California in enacting this section to ensure that no provision enacted by this initiative measure may be construed to grant to an inmate person sentenced to life in prison without the possibility of parole a parole hearing or a parole date.

(b) Nothing in this Code shall be construed to entitle a person sentenced to life in prison without the possibility of parole to a hearing before the Board of Adult Parole Hearings as provided in this Article, nor to grant to the Board of Adult Parole Hearings the power to conduct such a hearing or to grant a parole date to such person under any circumstance.

SECTION 56.

Section 4004.6 is added to Chapter 1 of Title 4 of Part 3 of the Penal Code to read:

4004.6 (a) The provisions of this Section shall apply to any county in which jail overcrowding has reached crisis levels as defined in subdivision (b).

(b) Jail overcrowding shall be deemed to reach crisis levels when any one of the following conditions occurs:

(1) The county is subject to a court order that requires jail inmates to be released prior to the expiration or completion of their jail sentences due to overcrowding; or

(2) The county is prepared to release, plans to release, or releases inmates prior to the expiration or completion of their jail sentences to avoid an inmate population that exceeds its inmate population capacity; or

(3) The inmate population in the county jail has exceeded ninety percent of the inmate population capacity of the jail on at least one occasion during each of six consecutive months.

(c) (1) The sheriff of any county described in subdivision (b), or in the case of Madera, Napa, and Santa Clara Counties, the board of supervisors or the Director of Corrections, shall be authorized to acquire and operate housing facilities that meet local health and safety codes for residential occupancy, and are deemed secure, as temporary jails or treatment facilities.

(2) Nothing in this section shall be construed to authorize the use of persons not employed by the county to staff temporary jail or treatment facilities.

(3) A temporary jail or treatment facility shall not be operated within an incorporated area of the county unless the city council or other legislative body of that city passes a resolution approving the operation of that facility in its incorporated area.

(4) Determinations regarding the placement of inmates and the security of temporary jail or treatment facilities shall be made exclusively by the county sheriff.

(5) No inmate shall be housed in a temporary jail or treatment facility for a period that exceeds 180 days based on a single sentence.

(6) The provisions of this act shall not be construed to limit or preclude any sheriff from employing lawfully authorized early release, electronic monitoring, or work release programs.

(7) The sheriff shall be authorized to utilize sentenced inmates incarcerated in temporary jail or treatment facilities, or otherwise house sentenced inmates in order to avoid overcrowding or to make incarceration a meaningful deterrent, for environmental cleanup, fire control abatement, and any other public safety or environmentally friendly work projects approved by the sheriff. All such inmates shall be electronically monitored during any time are outside confined areas..

(d) Notwithstanding any other law or regulation, the operation of a temporary jail or treatment facility authorized pursuant to this section is a discretionary act and shall not form a basis for imposing civil liability upon the sheriff, the sheriff's department, or the county or municipality within which the facility is operated.

(e) Any inmate who escapes or attempts to escape from a temporary jail or treatment facility operated pursuant to this section shall be guilty of a felony and shall be punished as provided in Section 4532.

(f) Any inmate who sustains a physical injury while assigned to a work release program authorized by Section 4024.2 may, if otherwise qualified, be entitled to compensation in accordance with provisions of Section 4453.1 of the Labor Code.

(g) In the event the condition constituting the jail overcrowding crisis level described in subdivision (b) has been remedied, and the total population of jail inmates within the county jail, including parole violators held in pursuant to a contract with the California Department of Corrections and Rehabilitation, remains below 80 percent of permanent authorized capacity for twelve consecutive months, the sheriff, or in the case of Madera, Napa, and Santa Clara Counties, the board of supervisors or the director of corrections, shall, within a reasonable period of time, either terminate the assignment of jail inmates to facilities described in subdivision (c), or shall bring these facilities into compliance with applicable laws and regulations governing permanent inmate housing.

SECTION 57.

Section 4004.7 is added to Chapter 1 of Title 4 of Part 3 of the Penal Code to read:

4004.7. (a) (1) It is the intent of the People in enacting this Section to address overcrowded and congested conditions in the criminal justice system, including county jails and courthouses, caused by the failure of the Legislature and other governing bodies that are responsible for ensuring sufficient funding for public safety budgets, to provide sufficient resources to relieve these overcrowded and congested conditions.

(2) Overcrowded and congested conditions in county jails undermine the rights of victims of crime specified in paragraphs (3) and (6) of subdivision (a) of Section 28 of Article I of the California Constitution to expect that that the Legislature, and other governing bodies that are responsible for ensuring that public safety budgets, provide sufficient resources to house in any state prison, county jail, or other state or local correctional or rehabilitation facility, all persons sentenced to those institutions or otherwise judicially compelled to abide by limitations on their freedoms as punishment for criminal activity, so that sentences imposed upon criminal wrongdoers will not be thwarted by the premature release of these wrongdoers caused by inadequate physical or personnel capacity to incarcerate them.

(3) Overcrowded and congested conditions in courthouses undermine the right of victims of crime specified in subparagraph (A) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution to expect that crime victims and witnesses can enter a criminal courthouse to participate in the criminal justice system without being subjected to intimidation, harassment, abuse, and danger.

(4) Overcrowded and congested conditions in the criminal justice system undermine the right of victims of crime specified in paragraph (3) of subdivision (a) and subparagraph (N) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution to expect that criminal wrongdoers will be expeditiously charged, brought before the courts, tried, and punished, and that there will be a speedy and prompt final conclusion of the case.

(5) In order to better protect the rights of victims of crime as described in this subdivision, measures must be taken, and new technology applied, to alleviate these overcrowded and congested conditions.

(b) (1) Each county and the courts of this State located therein, or other authority in charge of courthouse security, shall establish and implement procedures whereby named victims of crime, the immediate family of the victim, and support persons for the victim and the victim's family, are provided safe access to buildings in which courtrooms are located.

(2) Every subpoena or notice of hearing issued to a crime victim shall contain a courthouse security bypass authorization that shall give the victim, the immediate family of the victim, and support persons for the victim and the victim's family, priority placement in the courthouse security line in order to be expeditiously assisted through courthouse security screening.

(3) Wherever practicable, a separate courthouse entrance, security line, and designated and restricted safe seating area in the courthouse, shall be established for crime victims and the families of crime victims, so that these persons are not required to stand in the same line or wait in the same room or area of the courthouse with criminal defendants, their associates, or their families.

(4) (A)) In order to address the problem of overcrowding in the criminal justice system and to diminish the impact of that overcrowding on courthouses and their ability to focus resources on the security screening of dangerous persons, thereby protecting, criminal prosecutors shall be permitted to enter buildings in which courtrooms are located without passing through metal detectors and other electronic security devices, without their persons or property being searched, and without their having to stand in any public line to enter such buildings that might include criminal defendants or persons connected to criminal defendants.

(B) All criminal prosecutors shall be issued distinctive identifying badges and photo identification cards that shall be maintained in their possession while inside any courthouse and displayed upon the lawful request of any peace officer.

(C) The presiding judge of each county may in his or her discretion extend security bypass authorization as described in subparagraph (A) to judges, to deputy and assistant public defenders, to alternate public defenders, to private news media staff who are assigned full time to offices within the court building or who regularly cover the courts, and to active members of the state bar in good standing.

(D) The presiding judge of each county may in his or her discretion extend security bypass authorization as described in subparagraph (A) to court staff, district attorney office staff, and to the office staff of the clerk of the court, provided that the persons described in this subparagraph have worked in a full-time position for the county for a minimum of ten years.

(E) The county, or other entity responsible for courthouse security, may charge a yearly fee calculated at a rate not exceeding fifty percent of the amount of state bar dues in exchange for issuance of a security bypass "Officer of the Court" identification card, if requested by attorneys in private practice who are members of the state bar in good standing, and may for an identical fee issue a "Court Press" identification card requested by members of the news media described in subparagraph (B). The State Bar may charge a reasonable fee for issuance of a certificate of good standing.

(c) In order to address the problem of overcrowding in the criminal justice system and to diminish the impact of that overcrowding on the rights of crime victims and their immediate families as described in subdivision (a), a pilot program, with implementation provisions, shall be established to assess the applications of technology to alleviate and reduce overcrowding in the criminal justice system.

(1) A ten-year pilot project shall be established and an efficacy and efficiency study shall be conducted in the Antelope Valley Branch Courthouse of the Los Angeles County Superior Court, and in the Los Angeles County Jail, if feasible, and may also be conducted in such other counties in California that have suitable courthouse and jail facilities to conduct a meaningful pilot project as determined and selected by the Judicial Council, in consultation with the Administrative Office of the Courts. The goals of the pilot project shall be:

(A) To utilize advances in technology and communications to conserve limited public safety dollars by reducing the cost of transporting inmates to and from jail facilities for arraignment and other pre-trial court proceedings;

(B) To reduce congestion and security risks in courthouses by reducing the required personal physical attendance at and transportation to court proceedings of inmates incarcerated in the county jail;

(C) To expedite the criminal trial process and thereby promote speedier trials and final dispositions of criminal cases;

(D) To decrease the risk of harm, intimidation, abuse, and danger to crime victims and their immediate families by reducing the courthouse contact between these victims and defendants, their families, and associates;

(E) To facilitate economical and efficient communication between incarcerated defendants and their attorneys;

(F) To improve courthouse security by limiting the in-person presence of incarcerated defendants in criminal proceedings to jury or court trials, evidentiary motions, judgment and sentencing, and any other proceeding in which the defendant's in-person presence is required by the Constitution of the United States.

(2) The attendance of an incarcerated defendant in the pilot project shall, as soon as practicable, and except as described in subparagraph (F) of paragraph (1), occur by remote video that permits real-time interaction from the county jail or other secured location deemed suitable by Sheriff of Los Angeles County.

(A) An electronic system of remote video that permits real-time interaction viewing and communications shall be installed in the arraignment, preliminary hearing, and criminal trial courts the Antelope Valley Branch of the Los Angeles County Superior Court. The system of viewing shall be designed and installed in a manner that allows the defendant an opportunity to fully participate in arraignment, preliminary hearing, and other non-evidentiary pretrial proceedings from the county jail or other secure facility selected by the sheriff, and to have an adequate ability to hear and view proceedings, and an opportunity to participate and interact with his or her attorney.

(B) An electronic security screening system shall be implemented in order to secure the safe attendance of crime victims and witnesses at court proceedings.

(3) To implement the pilot project described in subdivision (A) of paragraph (2), five million dollars shall be appropriated from the general fund of the State of California to enable the Judicial Council, in consultation with the Administrative Office of the Courts, to enter into a contract covering partnership and system development, installation, and a system analysis focusing upon the economic and due process features of the technology.

(4) To operate the pilot project described in subdivision (A) of paragraph (2), up to one million dollars shall be appropriated each year from the general fund to pay for local operational costs.

(5) Notwithstanding any statute, ordinance, or regulation, any California-based corporate or individual donor, including a corporation or foundation organized under paragraph (3) of subdivision (c) of Section 501 of the Internal Revenue Code, shall be permitted to donate equipment, software, cash for the purchase of equipment and software, and expertise necessary to operate the pilot project. Implementation of the pilot project shall be contingent upon the receipt of sufficient private donations to acquire the necessary hardware and software.

(6) (A) There shall be formed an advisory committee to recommend guidelines for the pilot project to the Judicial Council and the Administrative Office of the Courts in order to ensure that the function and structure of the project satisfies federal and state constitutional requirements.

(B) The advisory committee shall be composed of one representative selected by each of the following persons: the Chief Justice of the California Supreme Court; the chair of the Board of Governors of the State Bar of California; the presiding judge of the Superior Court, sheriff, president of the prosecutors union or association of local prosecutors, and president of the county bar association of the county, all of the county in which the pilot project is implemented; two public sector experts in technology and government regulations appointed by the Governor; and a chairperson appointed by the Governor.

(C) The advisory committee described in this paragraph shall provide a yearly report on the progress of the pilot project. The first yearly report shall be made within one year of the completed implementation of the pilot project.

(D) The Judicial Council and Administrative Office of the Courts may utilize donations of equipment, software, and supplies that exceed the installation and operating costs of the pilot project to install additional pilot projects in courts other than the one described in subparagraph (A) of paragraph (2) of subdivision (c).

(7) If at any time during the ten-year pilot project, the Judicial Council determines that significant financial savings, diminished courthouse congestion, and/or increased court security can be attained without violating the constitutional rights of criminal defendants, the Judicial Council, in consultation with the Administrative Office of the Courts shall have

the authority to implement the pilot project described in subparagraph (A) of paragraph (2) of subdivision (c) in additional courthouses and jails in this State on a permanent basis, subject to adequate funding by the Legislature.

SECTION 58.

Chapter 1.1 (commencing with Section 4040) is added to Title 4 of Part 3 of the Penal Code to read:

CHAPTER 1.1. CIVIL RIGHTS OF COUNTY JAIL INMATES.

4040. (a) It is the intent of the People of the State of California in enacting this statute to implement and effectuate the rights of victims of crime guaranteed in paragraph (4) of subdivision (a) of Section 28 of Article I of the California Constitution and in subparagraph (N) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution, to expect that a criminal wrongdoer will be sufficiently punished, and that the punitive and deterrent effect of the incarceration will not be undercut or diminished by the granting of comforts, privileges, or other rights to incarcerated criminal wrongdoers that are not required by the United States Constitution or the laws of the State of California. It is the further intent of the People of the State of California in enacting this statute to ensure that the granting of comforts, privileges, or other rights to incarcerated wrongdoers does not divert resources required to meet a primary obligation of each county to provide adequate facilities and personnel to incarcerate criminal wrongdoers for the full terms of their sentences.

(b) Notwithstanding any other provision of law, no person confined in a county jail or any other local facility, including a state prison inmate or parolee housed in the county jail, as a result of a sentence or judgment, including a judgment in which imposition or execution thereof has been suspended, arising out of a criminal proceeding, shall be entitled to any right, privilege, or comfort, no matter how described, that the Constitution of the United States or the laws of the State of California do not require be granted to such persons.

(c) The Sheriff of each county, or his or her designee, shall be authorized to grant or to deny, in his or her discretion, to persons confined in a facility described in subdivision (b), any right or privilege not required to be granted by the Constitution of the United States or the laws of the State of California. In determining whether to grant a right or privilege not required to be granted by the Constitution of the United States or the laws of the State of California, the Sheriff or his or her designee shall be guided by the declaration of policy in paragraph (1) of subdivision (a) of Section 1170 that the purpose of imprisonment for crime is punishment.

(d) (1) It is a primary responsibility of each county to see that resources appropriated to the sheriff by the county for the maintenance and operation of the county jail are used to ensure that sentences imposed upon persons committed to the county jail are carried out, and that no early release of county jail inmates occurs due to inadequate space to house them.

(2) In the event that the sheriff or a federal or state court finds that the inmate population of any facility described in subdivision (b) exceeds its lawful capacity, or a federal or state court orders that inmates receive early releases from custody due to inadequate space to house them, the Sheriff shall suspend all privileges for sentenced prisoners that are not guaranteed to inmates by the Constitution of the United States, and shall reallocate resources to the primary responsibility of the county to provide adequate space to house all inmates for the full terms of their sentences.

SECTION 59. Intent Clause.

It is the intent of the People of the State of California in striking the language of existing subdivision (e) of Section 28 of Article I of the California Constitution and in amending Section 28 of Article 1 of the California Constitution to add subdivision (f), to re-enact as amended existing subdivision (e). Existing subdivision (e) of Section 28 of Article 1 of the California Constitution was passed by the electors as part of Proposition 8 on June 8,1982, but did not become operative, because its provisions conflicted with the provisions of Proposition 4, which enacted Section 12 of Article 1 of the California Constitution, and which was approved by the electors at the same election with a higher affirmative vote.

SECTION 60. Intent Clause.

It is the intent of the People in repealing Section 12 of Article 1 of the California Constitution to remove an existing provision of the California Constitution that conflicts with subdivision (f) of Section 28 of Article I of the California Constitution, so that subdivision (f) of Section 28 will become operative.

SECTION 61. Intent Clause.

It is the intent of the People in amending Section 12838 of the Government Code, in repealing Section 12838.4 of the Government Code, in enacting Section 12840 of the Government Code, and in enacting Section 3044 of the Penal Code, to reduce political and economic influences and pressures upon the Board of Adult Parole Hearings in carrying out its responsibility pursuant to Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code to determine whether to allow prisoners imprisoned in the state prisons pursuant to subdivision (b) of Section 1168 of the Penal Code to go upon parole outside the prison walls and enclosures. It is the intent of the People to thereby better ensure the right of crime victims set forth in subparagraph (R) of paragraph (1) of subdivision (b) of Section 28 of Article 1 of the California Constitution to expect that the Board of Adult Parole Hearings will follow the criteria for granting parole set forth in paragraph (3) of subdivision (a) of Section 3041 of the Penal Code, and that parole decisions will be made only on the criteria specified in Section 3041 and not on the basis of political or economic influences and pressures.

It is the further intent of the People in enacting Section 12840 of the Government Code to reduce political and economic influences and pressures upon the Board of Juvenile Parole in carrying out its responsibility to determine whether to allow a ward incarcerated in a facility or institution under the jurisdiction of the Juvenile Facilities Division of the Department of Corrections and Rehabilitation to go upon parole outside the walls and enclosures of the facility or institution, It is the intent of the People to thereby better ensure the right of crime victims set forth in subparagraph (R) of paragraph (1) of subdivision (b) of Section 28 of Article 1 of the California Constitution to expect that the Board of Juvenile Parole will follow only the appropriate criteria for granting parole to a juvenile ward, and that parole decisions will not be made on the basis of political or economic influences and pressures.

It is the intent of the People of the State of California in enacting Article 15 (commencing with Section 12840) of Chapter 1 of Part 2.5 of Division 3 of Title 2 of the Government Code, to overturn the legislative enactments made by Senate Bill No. 737 in the 2005-2006 Legislative Session [Stats. 2005 ch.10] that placed parole hearings of adult inmates and parole decisions of juvenile wards under the jurisdiction of the Department of Corrections and Rehabilitation.

SECTION 62. Intent Clause.

It is the intent of the People in amending Section 1054.9 of the Penal Code, in enacting Section 1473.1, and in enacting Section 1474.5 of the Penal Code, to expedite the disposition of postjudgment proceedings in order to better ensure the right of victims of crime to a speedy and prompt final conclusion of a criminal case, as provided in subparagraph (N) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution.

SECTION 63. Intent Clause.

It is the intent of the People in amending Sections 1270, 1270.1, 1272, 1272.1, 1274, and 1275 of the Penal Code, and in adding Section 1274.5 to the Penal Code, to better protect the right of victims of crime to receive reasonably adequate protection from the accused and persons acting on behalf of the accused from harm and threats of harm, as provided in subparagraphs (B) and (C) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution and subdivision (f) of Section 28 of Article 1 of the California Constitution.

SECTION 64. Intent Clause.

It is the intent of the People in amending Sections 3041, 3041.1, 3041.5, 3041.7, 3043, 3043.2, 3043.5, and 3043.6 of the Penal Code, and in adding Sections 3043.4 and 3043.7 to the Penal Code, to better protect the right of victims of crime to be informed of parole procedures and notified of parole proceedings, to participate in the parole process, and to provide information to the Board of Adult Parole Hearings prior to the parole of the offender, as provided in subparagraph (S) of paragraph (1) of subdivision (b) of Section 28 of Article I of the California Constitution.

It is the further intent of the People in amending Sections 3041, 3041.1, 3041.5, 3041.7, 3043, 3043.2, 3043.5, and 3043.6 of the Penal Code, and in adding Sections 3043.4 and 3043.7 to the Penal Code that these provisions as amended and enacted be applied to all parole proceedings for all inmates incarcerated in the Department of Corrections whose crimes were committed prior to, as well as those inmates whose crimes were committed on or after, the effective date of this initiative measure. However, it is the intent of the People in amending and enacting these Sections to comply with the constitutional principles set forth in *Garner v. Jones* (2000) 529 U.S. 244, 251, and *California Department of*

Corrections v. Morales (1995) 514 U.S. 499, 511, such that any provision amended or enacted herein shall not be deemed to apply to any person whose crime was committed prior to the effective date of this initiative measure and who is able to show that the provision amended or enacted creates a significant risk of prolonging his or her incarceration.

SECTION 65. Severability clause.

If any provision of this Act, or part thereof, or the application thereof to any person or circumstances is for any reason held to be invalid or unconstitutional, the remaining provisions which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SECTION 66. Conflict Clause.

It is the intent of the People of the State of California in enacting this Act that if any provision in this Act conflicts with another section of law which provides for greater rights of victims of crime, that the latter provision shall apply.

SECTION 67. Amendment Clause.

The statutory provisions contained in this Act may not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the electors. However, the Legislature may amend the statutory provisions of this Act to expand the scope of their application, to recognize additional rights of victims of crime, or to further the rights of victims of crime by a statute passed by majority vote of the membership of each house.