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THE WASHINGTON POST

Sunday, September 19, 1982

B 5

INSIGHT

Pro Bono Judges to Unclog Courts

Draft lawyers to render justice in the public interest

By Edward A. Dent

IT'S LITTLE WONDER that our clogged court system has been receiving considerable attention of late, most recently from Supreme Court justices.

The obvious consequences of overloaded courts are intolerable case delays or assembly-line justice (where justice prevails at all), unnecessary costs and anguish for plaintiffs, defendants and witnesses, more criminals on the streets, and growing fear and cynicism among the citizenry.

It's past time, therefore, to take a simple step to relieve jammed courts: Appoint experienced attorneys to serve, without fee, as temporary judges.

one to three cases. The American Bar Association Journal reports that 600 volunteers have served so far on 200 panels.

In the eight months, the temporary judges have disposed of 312 cases. Some 40 of these have been appealed further to the state supreme court, but only one appeal has been granted — an indication of the quality of the decisions by the temporary judges.

Such programs certainly have to be developed with care. *Pro bono* judges, for example, should come from the ranks of more experienced and respected attorneys, perhaps with at least 10 years' experience in the criminal or civil area.

Provisions might be made to have

This mismatch makes absolutely no sense, especially when one considers the magnitude of the problems produced by the judge shortage.

In criminal cases, it is the established practice of prosecutors, sanctioned by judges, to accept plea bargaining or reduced charges and sentences as a means of clearing jammed dockets. Courts have freed persons indicted for crimes because their constitutional right to a timely trial was being violated. Witnesses are often lost or their cooperation compromised when they refuse to tolerate further inconveniences.

In many jurisdictions, civil actions take between one and two years before they are heard. In Maryland, for example, civil law cases take an average of 435 days from filing to disposition; criminal cases take an average of 155 days. In the District of Columbia, the average civil case takes 365 days from calendar assignment to trial.

Court-ordered continuances, as a result of crowded dockets, often require all parties and witnesses to spend hours and days, on two or three occasions, sitting around the court — only to have their cases rescheduled. Although attorneys may not concede the point, many are not upset by these delays, since they remain on the clock. Their fees continue to mount.

Designed and implemented carefully, a voluntary judgeship program not only could relieve court backlogs, but it could provide aspiring permanent judges with valuable hands-on experience and otherwise benefit the short-term judges.

In Oklahoma Marvin Emerson, the former state court administrator who is now executive director of the Oklahoma Bar Association, says, "Lawyers are generally pleased with the program." He reports that "a popular response among the *pro bono* judges has been: 'By golly, I learned more about appellate procedure and writing briefs than I ever did.'"

Most important, though, such programs could make a major contribution to restoring confidence in American justice.

“Although there are a number of reasons for today's clogged courts, the chief one is that we simply do not have enough judges.”

How can this be done? Easily. Lawyers are already appointed to provide free counsel to poor defendants in criminal cases. Many law firms also volunteer to do *pro bono* work, donating attorneys' time for civil and criminal cases. There is no good reason why the legal profession cannot supply *pro bono* judges as well until criminal and civil cases are reduced to reasonable levels.

Indeed, this is already being tried in one state — Oklahoma, at the appeals court level — and with considerable success. The program there was begun some eight months ago by Oklahoma supreme court chief justice Pat Irwin, and the state legislature recently extended it for another year.

Under that system, temporary appeals judges are selected by the state supreme court. The chief justice then appoints these attorneys to temporary courts, each of which handles

them serve in other counties or jurisdictions to avoid conflicts of interest, and they should be barred from hearing any case in which they had dealings or were acquainted with the parties. These and other safeguards should present no great obstacles.

Although there are a number of reasons for today's clogged courts, the chief one is that we simply do not have enough judges. A jurisdiction such as the state of Virginia, for example, is dispensing justice with just one general district court judge for every 54,145 residents. (Court administrators agree that providing sufficient judges would also force improved efficiency in their department, another major roadblock to justice.)

At the same time, we have an abundant supply of lawyers. There are more than 450,000 attorneys in the United States — one for every 500 Americans. In New York City alone, one of every 200 residents is a lawyer; Washington and its suburbs are inundated with the breed.

Edward Dent, a political consultant, is an adviser to the judicial reform project of the Free Congress Foundation.

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For information write to:
Americans for the National
Voter Initiative Amendment
3115 N Street, N.W.
Washington, D.C. 20007

file

Mar 8
3:30

Conservative Initiative Possibilities

Next Meeting: Tuesday, March 8, 3:30 p.m. at Free Congress

Topics for discussion:

I. Crime/Justice

- A. Death Penalty
- B. Popular Recall of Judges
- C. pro-gun
- D. repeal of insanity defense -- guilty but insane
- E. Victims restitution
- F. "Crimestoppers" program
- G. Drug paraphernalia
- H. Bail Reform
- L. Mandatory Sentencing

II. Expansion of I&R process itself (goal for states where only ballot measure mechanism is through legislative referral)

III. Fiscal

- A. Taxes
 - 1. property tax slashes
 - 2. tax/spending limitations
 - 3. flat tax
- B. Balanced Budget (call for constitutional convention)
- C. Spending Freeze
- D. Sunset Laws

IV. Defense/Foreign Policy

- A. Foreign Aid to certain countries
- B. High Frontier/Zero Option
- C. Peace Through Strength

V. Social Justice Issues

- A. Infanticide
- B. busing
- C. tuition tax credits
- D. school prayer (silent prayer/equal access?)

1983 Ballot initiatives already in the works include Ohio initiative which would raise drinking age.

For 1984, taxes and the environment are once again hot themes. Oregon and Florida will almost certainly have Prop 13 "clone" tax slashing proposals. The environmentalists are gearing up around toxic waste issues and on utility issues.

Action items for March 8 meeting:

1. Discussion of specific states and the issues which would "fly" there
2. We will examine sample ballot language on some initiatives.
3. Discussion of potential for qualifying proposals through direct mail.

We need you at the next meeting. . . .

**CITIZEN'S RIGHT TO
VOTE ON ISSUES**

**Questions
and Answers
About National
Voter Initiative**

Americans for the Voter Initiative

*Americans for the National
Voter Initiative Amendment*

**3115 N Street, N.W.
Washington, D.C. 20007**

AVI

How will the Voter Initiative Amendment work?

To place an issue on the national ballot, citizens would have to collect signatures of registered voters equal to 3% of the last vote for President, approximately 2½ million signatures on a petition. (Spread in at least 10 states). If they completed this petition drive within 18 months, their issue would be placed on the next national election ballot, at the same time members of Congress are elected. A majority "yes" vote in the election would make the measure law.

Are there any limitations on initiative use?

Yes, a few. Constitutional amendments, calling up the militia, and declarations of war could not be addressed by initiative. Any laws passed by public vote would still be subject to review by the court system. And Congress could amend or veto initiative laws by a 2/3 Roll Call vote the first two years after passage, and by a majority vote thereafter. The initiative has therefore been designed to fit within our system of checks and balances.

Are the requirements reasonable?

Yes. They are in accordance with initiative procedures at the state level which have worked smoothly. California, the most populous state, requires 300,000 signatures for an initiative, and that state averages about two citizen-initiatives per election. The 2½ million signature requirement nationally would be a difficult but attainable test for important national issues.

Where is Voter Initiative now used?

The Constitution of 23 states and the District of Columbia presently authorize an initiative process. Since South Dakota became the first state to adopt initiative in 1898, some 1200 issues over 80 years have been voted on in state initiatives.

What issues might appear on a national ballot?

National issues will probably be those which have been stalled in Congress for some time - those which, though a majority of voters favor, have been ignored or sidestepped.

Is the Voter Initiative consistent with the principles as set down by the Founding Fathers?

Yes. There is nothing in the initiative process that contradicts the spirit of the Constitution. In the days of our Founding Fathers, it took news four days to travel the 13 states, and much of the electorate was either uneducated, uninformed, or both. Representative democracy was the only logical choice.

Today America has seen the advent of mass education and communication.

While the people may still be unequipped to make day-to-day decisions of government, they are as qualified to pass upon individual laws as upon the individual men who make them.

As well, the Founding Fathers could not have foreseen the substantial shift in the balance of power nor the legislative paralysis created by a proliferation of lobbyists, interest groups and campaign contributors, to a point, where principle and the good of the country is too often submerged by political expediency.

Our American system of democracy, after all, has performed well because of its built-in checks and balances. There is no reason that the people shouldn't have a check on Congress as well.

Finally, the initiative is an actualization of the existing First Amendment right to petition the Government for redress of grievances.

Might this process threaten our republican representative (deliberative) form of government?

In the 23 states that use the process, action by legislatures still accounts for 99.5% of all laws passed. Less than ½ of 1% of all measures passed, come by initiative. Yet this is a very important ½ of 1 %, prodding unresponsive legislatures and providing an important safety valve for the people.

As well, federal initiatives would be resorted to only after several attempts at Congressional action. A lengthy legislative history would precede any initiative effort, and to be successful, an initiative would have to have the support of opinion leaders, interest groups and experts, and legislative leaders.

Won't the process produce some bad legislation with too many issues voted on, emotional issues, or ill-conceived laws?

Results at the state level show that issues which do make it to the ballot will have to be of substantial public importance. About 80% of state initiative drives never reach the ballot, and nearly 2/3 of those that do are defeated. It is also a misconception that California's ballot is crowded by initiative votes. In fact, only about 2 initiatives per year, on average, have appeared on the ballot in the last 10 years, whereas an average of ten per year have appeared on the ballot because the legislature itself placed them there. Nationwide, less than 1 measure per initiative state, per year, has appeared on the ballot.

Is the initiative safeguarded against manipulation by special interest groups?

First, it should be noted that special interest groups already have excellent access to normal legislative channels, through full-time lobbyists and through campaign contributions.

Within our legislative process special interests find it far easier to lobby (focus) on a particular Congressman or Senator and secure their cooperation often for many reasons other than the merits of the issue. On the other hand, these groups can't lobby 200 million plus Americans. With an initiative, special interests are then forced to take their case to the people and make a persuasive case based on the merits of an issue. And historically the decisions of Americans are based on good common sense.

Will Voter Initiative increase voter participation?

Yes. State initiatives bring people out to vote who are interested in issues. In fact, over 700,000 more votes were cast by Californians on Proposition 13 (the tax-cut measure) than all the votes cast for all the candidates for Governor combined.

A poll by Cambridge Survey Research Corporation showed 74% of respondents indicating that they'd be more likely to go to vote if there were issues as well as candidates on the national election ballot.

In the November 1978 elections, voter turnout was 21% higher in initiative states with measures on the ballot than

in non-initiative states. Also, voter turnout in Florida (the latest initiative state) doubled in 1978 (the first year initiative measures appeared on the ballot) to 39% from 18% in 1974 (previously the lowest voter turnout of any state.)

Can the process be administered nationally? At a fair cost?

A recent study by the Congressional Budget Office reported that it would cost between 1 to 2 million dollars annually to administer the Voter Initiative Amendment. That works out to about a penny per American per year, certainly a fair administrative cost.

State elections officials testified before a Senate subcommittee to indicate that the same administrative procedures used for state initiatives could be used for federal initiatives, and that the process could be managed smoothly.

Who supports the Voter Initiative Amendment?

A recent Gallop Poll showed Americans 57% to 21% in favor — well over 2 to 1. Every political preference and geographic area showed overwhelming support for the Amendment. An advisory referendum held in Los Angeles in June, 1978, showed that County strongly in favor of the concept with over a million voters endorsing it. Support in the Congress for this measure has been on a bipartisan basis.

How can I help the Voter Initiative movement?

Show your support by writing, calling, or visiting your Congressman and Senators. Contribute to Americans for the Voter Initiative (AVI), which is working in the nation's capitol, for the right of initiative nationally and in the remaining states yet to gain the process.

It is far easier for the people to make wise decisions on issues than on the shifting promises and personalities of individuals.





AMERICANS FOR THE VOTER INITIATIVE

Americans for the National Voter Initiative Amendment

3115 N Street, N.W.
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A POLITICAL STRATEGY FOR PRESIDENT REAGAN AND THE REPUBLICAN PARTY:

-A CALL FOR A NATIONAL VOTER INITIATIVE PROCESS-

Political Impact

There are strong economic and social reasons to support the adoption of a national voter initiative process, but let's for a moment forget these rationales because there is another reason equally as important for Republicans, namely, political. If the Republican Party (in a moment of political shrewdness) champions the adoption of a National Voter Initiative, in one fell swoop they will succeed in stripping the Democratic Party of its claim to legitimacy, namely, being the party of the people.

It is well known that Tip O'Neil and Peter Rodino don't like the National Voter Initiative, nor do most of our Democratic friends in the House and Senate. The AFL-CIO and public employees unions loathe the concept. In fact, most of the Democratic support organizations, from the DNC, to Brookings, to Common Cause, to Nader's groups, are unfriendly to the idea. And with good reason. They have correctly assessed that the process will do serious damage to their programs and to their philosophy. In other words, they (the Democrats) really don't believe in democracy. They know that on too many issues they ~~really~~ don't stand for what common sense Americans want. And they don't want the people to have the opportunity to disagree with them on policy.

Further, a call by President Reagan would place the Democrats squarely upon the horns of a dilemma. If they oppose the measure, their hypocrisy (opposing the right of the people to vote on issues) would be plain for all to see. If they agree to pass the measure for fear of the political consequences they will give the President the vehicle he needs in the future to end run the Congress by going directly to the people.

Moreover, this call will go the extra mile to demonstrate that the President really cares about the voice of the people and will do much to counteract the rich Californian (Imperial Presidency) image the press likes to paint.

The National Voter Initiative provides adequate safeguards (checks) to guard against frivolous or extreme measures being adopted. A petition drive must succeed in at least 10 to 15 states as well as nationally. In one version, its popular vote majority must be confirmed by an automatic electoral vote majority as well. Congress may amend or veto any measure passed by a 2/3 vote during the first two years after passage and by a simple majority thereafter. And the federal judiciary may of course rule on the Constitutionality of any measure passed. So the process is quite compatible with our system of checks and balances.

-----It should further be noted that a proposed National Voter Initiative process would properly exclude votes on matters of foreign policy or national defense, since the people cannot be privy to secret data developed by the State Department, CIA, and NSA, data necessary to make an intelligent decision.

In summation, the process is an excellent addition to our system of government and the political opportunity for Republicans to seize the initiative and become the permanent majority party has never been better. The opportunity may not come again. It is an offer no politically astute Republican should refuse.

THE ECONOMIC/SOCIAL RATIONALE: AN OVERVIEW

Why Should Republicans Be Solidly Behind a
National Voter Initiative?

1. A study of the use of all statewide initiatives in the United States through 1976 (over 80 years) showed that the people had decided by better than 4 to 1 to reject initiatives providing for regulatory boards, bureaus, and measures--a record directly opposite to that of Congress.
2. The same study (through 1976) showed that the people (through initiatives) rejected by better than 3 to 1 (5 to 1 since 1955) statewide initiatives which either taxed, funded or spent their money--again a pattern totally contrary to that of Congress.

The reasons for these ballot results are very simple. The people must pay the bill for these (levies) taxes or administrative bodies, and there are no political rewards involved when they vote. As well, for obvious reasons the people are quite reluctant to pass excessive regulatory or environmental measures which might hurt jobs or the economy. Moreover, the people do not wish to foreclose upon their option to participate in the free enterprise system as entrepreneurs.

3. California, a state which would have the ninth largest economy in the world if it were a nation, has used the initiative for over 80 years without any serious setbacks to its business climate.

As a matter of fact, a strong case can be made to show that gov-

ernmental controls and taxation prevalent in other states have been inhibited due to the initiative process.

4. The climate for business in the western states which are predominantly initiative states is considerably more favorable than is the climate in non-initiative states, notably the northeast and north central United States. Those states unchecked by initiative or referendum have adopted heavy social welfare, taxing, and business regulation policies (New York, New Jersey, et cetera).

5. Switzerland, the only nation in the world with a National Voter Initiative, has had notable success in preserving a pro-business, anti big government climate. Switzerland was featured in a 1978 Fortune magazine for its unusually high employment, low inflation, and high productivity, insured and bolstered, according to Fortune, by the national referendum-initiative process.*

SWISS INITIATIVE EXPERIENCE: (Fortune magazine--12/18/78)
"Say Willy Linder, Economic Editor of the Neue Zurcher Zeitung, 'The Swiss remains unselfish and sensible enough to vote at times in favor of issues ^{WHICH SEEM TO BE} against his or her self-interest. Yet in the long run, these attitudes have contributed to Switzerland's economic and political stability. During the past three years, for example, the Swiss, by margins generally exceeding 3 to 1, have decided in referendums not to cut the work week from forty-four to forty hours, not to levy special taxes on the rich and high salary earners, not to grant Swiss workers a say in the management of Swiss industries, not to reduce the qualifying age for admission to Switzerland's generous old-age pensions, not to allow the central government to raise funds to counter domestic economic downturns, and finally not to allow the central government to run deficits. Instead the Swiss voted to raise taxes on themselves, so that the federal government could operate on a pay as you go basis.'" During the past three years, the inflation rate has been 1% in 1976 and 1977 and 0.5% in 1978. Unemployment is at 0.3% (1978).

6. Occasionally in the United States an initiative which inhibits business passes, but the overall record of the process (in the 23 states) reference business shines in comparison with that of Congress.

7. Over the last ten years, culminating in the June 8, 1982 elections, Californians by initiative and in spite of legislative, judicial, and executive opposition have passed some of the most sweeping and farreaching measures aimed at fighting crime through judicial reform, including: mandatory five year prison sentences for crimes of violence committed with a firearm, reinstatement of the death penalty,* elimination of plea bargaining for crimes of violence, restricting bail for offenders involved in crimes of violence where the public safety cannot be assured, requiring financial restitution--regardless of sentence--by criminals to victims, mandating double penalties for repeat offenders, restriction of the insanity plea, authorization of bond measures for the construction of new prisons, and many others. The last six of these measures passed 6 June 1982 closed virtually all revolving door loopholes for criminals. California, because of its initiative process, is far ahead of other states and the federal government in enacting reform measures to fight crime.

An additional full discussion of the National Voter Initiative contained in an article published in a 17 October 1981 issue of Human Events newspaper is available upon request. I hope you will agree that the combined political, economic, and social rationale for the adoption of the National Voter Initiative is compelling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward A. Dent", with a stylized flourish at the end.

EDWARD A. DENT

NATIONAL VOTER INITIATIVE AMENDMENT

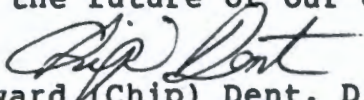
March, 1979

I have had people ask me the questions: what is wrong with the system of elected representatives? Why does it need improving with the initiative? If the representatives don't do the job (what the people want) won't then the people vote them out and get someone else? And therefore won't those in office perform well, by representing the best interests and will of their constituents? Well that's how the system is supposed to work, but in practice too often it just doesn't work that way.

Why? Because unfortunately in too many cases the political interests of Congressmen and Senators (officeholders) is totally at odds with their constituents' interest on issues. It is a political fact of life, that Congressmen and Senators are highly concerned with being reelected. In order to do this they must satisfy the wishes of the best organized and monied interest groups. And the wishes of these factions are often totally inconsistent with the wishes of the general population. As well it is a natural inclination of a legislator to wish to expand (not contract) his power base. And again he does this by satisfying the wishes of the special groups; and by expanding his bureaucratic oversight or domain. His decisions therefore far too frequently tend to reflect his best political interest (and not the best interests of his constituents or of the nation. Therefore, political expediency triumphs over principle.

Further, with the politics of personality, citizens are just not magician enough to translate issues into candidates. Politicians are very adept at either fuzzing (blurring) the issues or at forgetting their promises (changing their minds). Hence, the initiative slogan, "A proposition duly placed on the ballot by petition cannot change its mind after the polls are closed", sums up the frustrations of the people.

Finally, within our legislative process special interests find it far easier to lobby (focus) on a particular Congressman or Senator and secure their cooperation often for many reasons other than the merits of the issue. On the other hand these groups can't lobby 200 million plus Americans. With an initiative, special interests are then forced to make a persuasive case based on the merits of an issue. And historically the decisions of Americans are based on good common sense, and not extravagant intellectual expeditions into fantasy land. Both legislator and voter breathe a little easier as some of the pressures (on legislators) and frustrations (of voters) are removed and the direct lines of communication are strengthened. This is why the additional voice of initiative process is so critically important to the future of our democratic republic.



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AMERICANS FOR THE VOTER INITIATIVE ✓

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TO: MORTON Blackwell

1/2/83

From: EDWARD Chip DENT

Dear Morton,

I thought you might
find the enclosed California Voter
Information Pamphlet - Reference Sure Criminal
Justice Statute of interest. Note the Pro
CON Arguments. Every Registered Voter gets one
of these.

I believe Dukakis's strong backing in
this Pamphlet of the Criminal Justice initiative
contributed significantly to his November victory.

Many Initiative States require the Pro
CON Ballot Pamphlets be distributed to ALL
Registered Voters. Thanks for your interest

Sincerely
Chip

*CRIME -- MURDER
SENTENCES
CRIM. CRIM. INQ.*

CALIFORNIA BALLOT PAMPHLET

Primary Election

June 8, 1982



Compiled by MARCH FONG EU • Secretary of State
Analyses by WILLIAM G. HAMM • Legislative Analyst

Official Title and Summary Prepared by the Attorney General

CRIMINAL JUSTICE. INITIATIVE STATUTES AND CONSTITUTIONAL AMENDMENT. Amends Constitution and enacts several statutes concerning procedural treatment, sentencing, release, and other matters for accused and convicted persons. Includes provisions regarding restitution to victims from persons convicted of crimes, right to safe schools, exclusion of relevant evidence, bail, use of prior felony convictions for impeachment purposes or sentence enhancement, abolishing defense of diminished capacity, use of evidence regarding mental disorder, proof of insanity, notification and appearance of victims at sentencing and parole hearings, restricting plea bargaining, Youth Authority commitments, and other matters. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: As the fiscal effect would depend on many factors that cannot be predicted, the net fiscal effect of this measure cannot be determined with any degree of certainty. However, approval of the measure would result in major state and local costs. The measure could: increase local administration costs; increase state administrative costs; increase claims against the state and local governments relating to enforcement of the right to safe schools; increase school security costs to provide safe schools; increase the cost of operating county jails by increasing the jail populations; increase court costs; and increase the cost of operating the state's prison system by increasing the prison population (estimated to be about \$47 million increased annual prison operating costs and \$280 million prison construction costs based on various assumptions).

Analysis by the Legislative Analyst

Background:

The California criminal justice system is governed by the State Constitution, by statutes enacted by the Legislature and the people, and by court rulings.

Under the criminal justice system, persons convicted of *misdemeanors* may be fined or sentenced to a county jail term, or both. Those convicted of *felonies* may be fined in some cases, sentenced to state prison, or (if they were under 21 years of age at the time they were apprehended) committed to the Youth Authority, or both fined and imprisoned. For some crimes, a person may receive "probation" in lieu of a prison sentence or a fine.

Proposal:

This initiative proposes many changes in the State Constitution and statutory law that would alter criminal justice procedures and punishments and constitutional rights. The major changes are summarized below.

Restitution. Under existing law, victims of crime are not automatically entitled to receive "restitution" from the person convicted of the crime. (Restitution would involve, for example, replacement of stolen or damaged property, or reimbursement for costs that the victim incurred as a result of the crime.) In some cases, however, the courts release a convicted person on probation, on the condition that restitution be provided to the victim or victims.

This measure would grant crime victims who suffer losses a constitutional right to receive restitution. Except in unusual cases, convicted persons would be required to make restitution to all of their victims who suffer losses. The extent to which restitution would be made would depend on how many convicted persons have or acquire sufficient assets to make restitution.

The Legislature would be responsible for adopting laws to implement this section of the measure.

Safe Schools. The Constitution currently provides that all people have the inalienable right of "pursuing and obtaining safety, happiness, and privacy." In addition, statutory law prohibits various acts upon school grounds which disturb the peace of students or staff, or which disrupt the peaceful conduct of school activities. This measure would add a section to the State Constitution declaring that students and staff of public elementary and secondary schools have the "inalienable right to attend campuses which are safe, secure, and peaceful."

Evidence. Under current law, certain evidence is not permitted to be presented in a criminal trial or hearing. For example, evidence obtained through unlawful eavesdropping or wiretapping, or through unlawful searches of persons or property, cannot be used in court. This measure generally would allow most relevant evidence to be presented in criminal cases, subject to such exceptions as the Legislature may in the future enact by a two-thirds vote. The measure could not affect *federal* restrictions on the use of evidence.

Bail. Under the State Constitution and statutory law, the courts generally must release on bail all persons accused of committing a crime, while they await trial. The courts may deny bail *only* for those who are accused of felonies punishable by death if the court determines that the proof of guilt is evident or the presumption of guilt is great.

In fixing the amount of bail, courts are required by statute to consider the seriousness of the offense with which the person is charged, the defendant's previous criminal record and the probability that the defendant will appear at the trial or hearings of the case. The State Constitution prohibits courts from setting "excessive" bail.

The courts also may allow those accused of commit-

Continued on page 54

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly repeals and adds existing provisions of the Constitution, and adds provisions to the Penal Code and the Welfare and Institutions Code; therefore, provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SEC. 1. This amendment shall be known as "The Victims' Bill of Rights".

SEC. 2. Section 12 of Article I of the Constitution is repealed.

~~SEC. 12. A person shall 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.~~

A person may be released on his or her own recognizance in the court's discretion.

SEC. 3. Section 28 is added to Article I of the Constitution, to read:

SEC. 28. (a) *The People of the State of California 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 those rights, is a matter of grave statewide concern.*

The rights of victims pervade 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 basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, 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) *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 restitution from the persons convicted of the crimes for losses they suffer.*

Restitution shall be ordered from the convicted persons 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) *Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.*

(d) *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 353, 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) *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) *As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 11927(c).*

SEC. 4. *Diminished Capacity; Insanity.* Section 25 is added to the Penal Code, to read:

25. (a) *The defense of diminished capacity is hereby abolished. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged.*

(b) *In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense.*

(c) *Notwithstanding the foregoing, evidence of diminished capacity or of a mental disorder may be considered by the court only at the time of sentencing or other disposition or commitment.*

(d) *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.*

SEC. 5. *Habitual Criminals.* Section 667 is added to the Penal Code, to read:

667. (a) *Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.*

(b) *This section shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this section to apply.*

(c) *The Legislature may increase the length of the enhancement of sentence provided in this section by a statute passed by majority vote of each house thereof.*

(d) *As used in this section "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.*

(e) *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.*

SEC. 6. *Victim's Statements; Public Safety Determination.*

(a) Section 1191.1 is added to the Penal Code, to read:

1191.1 *The victim of any crime, or the next of kin of the victim if the victim has died, has the right to attend all sentencing proceedings under this chapter and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.*

The victim or next of kin has the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his or her views concerning the crime, the person responsible, and the need for restitution. The court in imposing sentence shall consider

Continued on page 56

Arguments in Favor of Proposition 8

It is time for the people to take decisive action against violent crime. For too long our courts and the professional politicians in Sacramento have demonstrated more concern with the rights of criminals than with the rights of innocent victims. This trend must be reversed. By voting "yes" on the Victims' Bill of Rights you will restore balance to the rules governing the use of evidence against criminals, you will limit the ability of violent criminals to hide behind the insanity defense, and you will give us a tool to stop extremely dangerous offenders from being released on bail to commit more violent crimes. Your action is as vital and necessary today as it was in 1978 when I urged Californians to take property taxes into their own hands and pass Proposition 13. If you believe as I do that the first responsibility of our criminal justice system is to protect the innocent, then I urge you to vote "yes" on Proposition 8.

MIKE CURB
Lieutenant Governor

Crime has increased to an absolutely intolerable level.

While criminals murder, rape, rob and steal, victims must install new locks, bolts, bars and alarm systems in their homes and businesses. Many buy tear gas and guns for self-protection. FREE PEOPLE SHOULD NOT HAVE TO LIVE IN FEAR.

Yet, higher courts of this state have created additional rights for the criminally accused and placed more restrictions on law enforcement officers. This proposition will overcome some of the adverse decisions by our higher courts.

THIS MEASURE CREATES RIGHTS FOR THE VICTIMS OF VIOLENT CRIMES. It enacts new laws that those of us in law enforcement have sought from the Legislature without success.

While there are more people going to state prison than there were three years ago, only 5.5 percent of those persons arrested for felonies are sent to state prison. Of those convicted of felonies, one-third go to state prison and the remaining two-thirds are back in the community in a relatively short period of time.

THERE IS ABSOLUTELY NO QUESTION THAT THE PASSAGE OF THIS PROPOSITION WILL RESULT IN MORE CRIMINAL CONVICTIONS, MORE CRIMINALS BEING SENTENCED TO STATE PRISON, AND MORE PROTECTION FOR THE LAW-ABIDING CITIZENRY.

IF YOU FAVOR INCREASED PUBLIC SAFETY, VOTE YES ON PROPOSITION 8.

GEORGE DEUKMEJIAN
Attorney General

Why is it that the Legislature doesn't start getting serious about a problem until we, the people, go out and qualify an initiative?

Four years ago it was Proposition 13, which I coauthored, to cut skyrocketing property taxes.

A year later we had to go to the initiative process to place a lid on government spending. That effort, the Gann Spending Limitation Initiative, was carried with a landslide 75 percent of the vote.

Today it is the forgotten victims of violent crime that the Legislature has so callously ignored. Again, it is up to the people to bring about reasonable and meaningful reform.

Your "YES" vote on Proposition 8 will restore victims' rights and help bring violent crime under control.

PAUL GANN
Proponent, Victims' Bill of Rights

Rebuttal to Argument in Favor of Proposition 8

WHY DON'T THE POLITICIANS SUPPORTING PROPOSITION 8 TELL YOU WHAT IT REALLY DOES? Look closely at their arguments. They are simply political slogans and anticrime propaganda.

Every responsible citizen opposes crime, but we should also be very **HESITANT** to make **RADICAL** changes in our Constitution.

Yet Proposition 8 does just that . . . it needlessly reduces your personal liberties . . . and clearly harms true efforts to fight crime.

CONSIDER THESE EFFECTS OF PROPOSITION 8:

Takes away everyone's right to bail. (Compare Proposition 4, which targets only violent felons.)

Allows strip searches of minor traffic offenders.

Condonates the use of wiretapping and seizure of your telephone and credit records without a warrant.

Permits spying on you in a public restroom.

Either Proposition 8 takes away your rights, or it is unconstitutional . . . in which case *valid criminal convictions will be thrown out.*

The other reason they say nothing specific is that **MUCH OF PROPOSITION 8 IS ALREADY LAW.** These laws:

Send mentally disordered sex offenders to prison.

Eliminate the diminished capacity defense.

Provide life sentences for habitual criminals.

Guarantee victim input.

Place controls on plea bargaining.

Restrict bail for violent felons (Proposition 4).

Proposition 8 will *undermine these new laws* by imposing its confusing language on top of clear, well-thought-out reforms.

Proposition 8 is the kind of abuse of the initiative process by political candidates which should be condemned. If you care about your privacy . . . and especially if you care about effective, responsible law enforcement . . . **VOTE NO ON PROPOSITION 8.**

RICHARD L. GILBERT
District Attorney, Yolo County

STANLEY M. RODEN
District Attorney, Santa Barbara County

TERRY GOGGIN
*Member of the Assembly, 66th District
Chairman, Committee on Criminal Justice*

Criminal Justice—Initiative Statutes and Constitutional Amendment

8

Argument Against Proposition 8

You're afraid of crime—and you have the right to be. If Proposition 8 would end crime, we would be the first to urge you to vote for it.

But Proposition 8 is a hoax . . . there is no other way to describe it.

Some ambitious politicians may think this ill-conceived measure helps them. It will certainly help keep an army of appellate lawyers fully employed . . .

But it will not reduce crime, help victims, or get dangerous criminals off the streets.

As professionals, charged with the responsibility of controlling crime and prosecuting criminals . . . we ask YOU to PLEASE VOTE NO on PROPOSITION 8.

Proposition 8 is so badly written *it mangles* nearly every aspect of the criminal justice system it touches.

READ the PROBLEMS it will cause:

UNCONSTITUTIONAL INITIATIVE TAKES CONVICTED KILLERS OFF DEATH ROW

Even some of Proposition 8's supporters agree it may be unconstitutional. But unconstitutional laws cause sentences to be overturned. Thirty convicted killers were recently taken off death row because of one unconstitutional line in the 1978 Death Penalty Initiative.

CONVICTING PEOPLE LIKE THE "FREEWAY KILLER" NEARLY IMPOSSIBLE

Proposition 8 seeks to stop plea bargaining. Its wording, however, would take away law enforcement's ability to negotiate with criminals to get them to testify against each other . . . This is how the "Freeway Killer" was convicted. It is how law enforcement fights organized crime and gang violence.

FREES DEFENSE LAWYERS TO SMEAR POLICE WHO TESTIFY IN COURT

Under current law, a defense lawyer cannot attack the character of a police witness. If Proposition 8 passes he could.

REQUIRES MILLIONS OF DOLLARS IN NEW COURT PROCEDURES—BUT NO MONEY TO PAY FOR THEM

Look at the cost of Proposition 8 at the top of this measure. Why is it so expensive?

A major share is for extra court hearings and elaborate new red tape in every criminal case—most of which are misdemeanors. This will require more courts, judges, clerks, and probation officers.

Proposition 8 does not provide one cent to pay for these things.

COURTS IN CHARGE OF PUBLIC SCHOOLS

Nobody knows what the so-called "safe schools" section means. The likely result of this provision is constant court battles over compliance. This will no doubt lead to judges running some of our schools. It also could give children the constitutional right to refuse to attend school.

VICTIM RESTITUTION—A MEANINGLESS PROMISE

What good is a right to restitution when so many victims are harmed by criminals who can't pay? (Ever been hit by an uninsured motorist?) Besides, victims already have the right to collect from criminals who can pay.

PROPOSITION 8—A POLITICAL PLOY

As professionals, we know our criminal justice system needs carefully written, tough, constitutional laws and procedures.

Proposition 8 is none of these. It makes it harder to convict criminals, will lead to endless appeals, and will create chaos in the legal system.

It may be good politics, but it is bad law.

PLEASE, VOTE NO ON PROPOSITION 8.

RICHARD L. GILBERT

District Attorney, Yolo County

STANLEY M. RODEN

District Attorney, Santa Barbara County

TERRY GOGGIN

*Member of the Assembly, 66th District
Chairman, Committee on Criminal Justice*

Rebuttal to Argument Against Proposition 8

LAW ENFORCEMENT SUPPORTS PROPOSITION 8

Proposition 8 has been endorsed by more than 250 police chiefs, sheriffs and district attorneys. It has the support of more than 30,000 rank-and-file police officers.

Senior Assistant Attorney General George Nicholson, a chief architect of the Victims' Bill of Rights and a former murder prosecutor, has called Proposition 8 "the most effective anticrime program ever proposed to help the forgotten victims of crime."

ANTICRIME LEGISLATIVE LEADERS SUPPORT PROPOSITION 8

Proposition 8 coauthor Assemblywoman Carol Hallett says, "A generation of victims have been ignored by our Legislature, thanks to the Assembly Criminal Justice Committee. Proposition 8 takes the handcuffs off the police and puts them on the criminals, where they belong."

THE PEOPLE SUPPORT PROPOSITION 8

Throughout California, hundreds of thousands of your fellow citizens carried and signed petitions to place this vital initiative on the ballot. Many of these people have lost family members or are themselves victims of crime.

But they are not only victims of crime, they are victims of our criminal justice system—the liberal reformers, lenient judges and behavior modification do-gooders who release hardened criminals again and again to victimize the innocent.

It's time to restore justice to the system.

VOTE YES FOR VICTIMS' RIGHTS.

VOTE YES ON PROPOSITION 8

PAUL GANN

Proponent, Victims' Bill of Rights

donee (person receiving the gift). That is, a separate gift tax computation is made for the gifts to each donee, rather than making one computation based on the total value of the gifts from a single donor (the person giving the gift) to all donees. The specific exemptions and rates of tax are the same as under the Inheritance Tax Law.

2. Valuation

For purposes of the Gift Tax Law, the property which is the subject of the gift is valued at its market value on the date of gift. Unlike the Inheritance Tax Law (see Section 4), the Gift Tax Law does not contain a provision for the special use value of real property.

3. Exclusions

Gifts made to the spouse of the donor during the donor's lifetime are excluded from the gift tax. The Gift Tax Law also excludes gifts made to government agencies and charitable organizations and gifts of intangible personal property belonging to a donor who resided in a territory or state of the United States, other than California, at the date of gift. The Gift Tax Law does not provide an exclusion for a gift of insurance, nor does it provide an exclusion for gifts of an interest in a public pension or retirement plan.

The Gift Tax Law does provide a \$3,000 annual exclusion for gifts to each donee. That is, in each year a donor may make gifts of up to \$3,000 to each donee without incurring any gift tax.

4. Gift Tax Returns and Determination of the Tax

Under the Gift Tax Law, the donor is required to file

quarterly with the state a gift tax return reporting the gift or gifts made.

5. Payment of Tax

Both the donor and the donee of a gift are liable for the gift tax, but the donor has primary responsibility for the tax.

The tax becomes delinquent on the last day allowed for filing a return. Any delinquent gift tax accrues interest at the rate of 12 percent per annum until the tax, plus interest, is paid in full.

The Gift Tax Law does not contain provisions for installment payments, nor does it allow for an adjusted rate of interest for late payment of the tax.

6. Penalties

If a gift tax return is not filed when due, it is subject to a penalty equal to 5 percent of the tax owed. Additional penalties are imposed in cases involving such matters as fraud or willful failure to file a return.

7. Interest on Refunds

In the case of overpayment of the gift tax due, interest is allowed on the refund of the excess payment. If the overpayment is due to an error or mistake on the part of the taxpayer, the interest on the refund is computed at a specified rate, not to exceed 7 percent per annum. If the overpayment does not reflect an error or mistake on the part of the taxpayer, interest on the refund is computed at the rate of 12 percent per annum. Interest is allowed from the date on which the payment of the tax would have become delinquent, if not paid, or the date of actual payment, whichever is later.

Proposition 8—Analysis—Continued from page 32

ting a crime to be released without bail upon their written promise to appear in court when required. The failure to appear in court as promised can result in additional criminal charges being filed against the accused.

Court decisions have held that the purpose of bail is to assure that the defendant will appear in court to stand trial, rather than to protect the public's safety.

This measure would amend the State Constitution to give the courts discretion in deciding whether to grant bail. It would, however, continue the prohibition on bail in felony cases punishable by death when the proof of guilt is evident or the presumption of guilt is great.

In addition, the measure would add to the State Constitution a provision requiring the courts—in fixing, reducing, or denying bail or permitting release without bail—to consider the same factors that they now are required by statute to consider in fixing the amount of bail. It would also make protection of the public's safety the primary consideration in bail determinations. Moreover, the measure would prohibit the courts from releasing without bail persons charged with certain felonies.

Finally, the measure would require the court to state for the record its reasons for deciding to (a) grant or

deny bail or (b) release an accused person without bail.

Prior Convictions. The measure would amend the State Constitution to require that information about prior felony convictions be used without limitation to discredit the testimony of a witness, including that of a defendant. Under current law, such information may be used only under limited circumstances.

Longer Prison Terms. Under existing law, a prison sentence can be increased from what it otherwise would be by from one to ten years, depending on the crime, if the convicted person has served prior *prison terms*, and a life sentence can be given to certain repeat offenders. Convictions resulting in probation or commitment to the Youth Authority generally are not considered for the purpose of increasing sentences, and there are certain limitations on the overall length of sentences.

This measure includes two provisions that would increase prison sentences for persons convicted of specified felonies. First, upon a second or subsequent conviction for one of these felonies, the defendant could receive, on top of his or her sentence, an *additional* five-year prison term for each such prior conviction, regardless of the sentence imposed for the prior conviction. This provision would not apply in cases where other provisions of law would result in even longer pris-

on terms. Second, any prior felony conviction could be used without limitation in calculating longer prison terms.

Defenses of Diminished Capacity and Insanity. The measure would prohibit the use of evidence concerning a defendant's intoxication, trauma, mental illness, disease, or defect for the purpose of proving or contesting whether a defendant had a certain state of mind in connection with the commission of a crime. Legislation enacted in 1981 significantly limited use of this type of evidence.

This measure would provide that in order to be found not guilty by reason of insanity a defendant must prove that he or she (1) was incapable of knowing or understanding the nature and quality of his or her actions and (2) was incapable of distinguishing right from wrong at the time of the crime. These provisions could increase the difficulty of proving that a person is not guilty by reason of insanity.

If this measure is approved, evidence of diminished mental capacity or a mental disorder could be considered at the time of sentencing.

Victim Statements. Under existing law, statements of victims or next of kin are requested for various reports which are submitted to the court. In many cases, parole boards are not required to notify victims or next of kin about hearings.

This measure would require that the victims of any crimes, or the next of kin of the victims if the victims have died, be notified of (1) the sentencing hearing and (2) any parole hearing (if they so request) involving persons sentenced to state prison or the Youth Authority. During the hearings, the victim, next of kin, or his or her attorney would have the right to make statements to the court or hearing board. In addition, this measure would require the court or hearing board to state whether the convicted person would pose a threat to public safety if he or she were released on probation or parole.

Plea Bargaining. The measure would place restrictions on plea bargaining in cases involving specified felonies and offenses of driving while under the influence of an intoxicating substance. "Plea bargaining" is a term used to describe situations in which the defendant agrees to plead guilty in exchange for a reduced charge or sentence.

Exclusion of Certain Persons from Sentencing to the Youth Authority. Under current law, persons who commit certain sex crimes at the age of 18 years or older and some other youthful offenders are not sent to the Youth Authority. This measure would prohibit sending to the Youth Authority persons who were 18 years of age or older at the time they committed murder, rape, or other specified felonies. As a result, they would be sentenced to state prison or local jails, or receive probation.

Mentally Disordered Sex Offenders. This measure contains a provision which would have changed the law concerning the treatment of certain sex offenders. However, legislation enacted in 1981 achieved the same purpose. Consequently, this provision has no effect.

Fiscal Effect:

The net fiscal effect of this measure cannot be determined with any degree of certainty. This is because the fiscal effect would depend on many factors that cannot be predicted. Specifically, it would depend on:

- how various provisions are implemented by the Legislature, local governments, and school districts,
- how the rights established by the measure are enforced by the courts,
- how many persons are incarcerated in state prison or detained in county jails for longer periods of time,
- how the various provisions affect criminal behavior (that is, to what extent the measure has a deterrent effect), and
- how the criminal justice system reacts to the measure.

We conclude, however, that approval of the measure would result in major state and local costs. This is because the measure, taken as a whole, could:

- increase local administration costs (for example, there would be a cost to implement the restitution procedures and to notify victims of sentencing hearings),
- increase state administrative costs (for example, there would be a cost to notify victims of parole hearings),
- increase claims against the state and local governments relating to enforcement of the right to safe schools,
- increase school security costs to provide safe schools,
- increase the cost of operating county jails by increasing the jail populations (for example, more persons accused of crimes could be denied bail in order to assure public safety and more persons could be detained in jail while awaiting trial due to the elimination of plea bargaining),
- increase court costs (for example, costs could increase due to more extensive bail hearings and the elimination of plea bargaining), and
- increase the cost of operating the state's prison system by increasing the prison population (for example, by increasing terms for certain repeat offenders). Based on various assumptions, the Department of Corrections estimates that the provisions that would result in longer prison terms for repeat offenders would lengthen the terms of at least 1,200 persons each year. The department states that this estimate may be low for several reasons. In addition, the measure's impact on conviction and sentencing trends and patterns cannot be predicted. As a result of these uncertainties, we cannot estimate how many persons would serve longer prison terms if this measure is approved. If, however, 1,200 persons per year were to receive the new sentences instead of the sentences provided under current law, annual state prison operating costs would increase by about \$47 million (in 1982-83 prices) by the mid-1990s. This cost estimate assumes that the state's prison population would be about 3,600 higher than under existing law. In addition,

the state might need to spend up to \$280 million (in 1982 prices) to construct facilities to house these additional prisoners. The construction cost estimate assumes that existing standards for prisons would be followed when the new facilities were constructed, and that the custody levels (for example, maximum

security) required for the additional inmates would match current housing patterns. To the extent that some of the additional prisoners could be housed by crowding existing facilities, both the estimated operating and construction costs could be reduced.

Proposition 8—Text—Continued from page 33

the statements of victims 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.

(b) Section 3043 is added to the Penal Code, to read:

3043. Upon request, notice of any hearing to review or consider the parole eligibility or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin 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.

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.

(c) Section 1767 is added to the Welfare and Institutions Code, to read:

1767. Upon request, written notice of any hearing to consider the release on parole of any person under the control of the Youth Authority for the commission of a crime or committed to the authority as a person described in Section 602 shall be sent by the Youthful Offender Parole Board at least 30 days before the hearing to any victim of a crime committed by the person, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin 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. 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.

SEC. 7. Limitation of Plea Bargaining. Section 1192.7 is added to the Penal Code, to read:

1192.7 (a) Plea bargaining in any case in which the indictment or information charges any serious felony or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the de-

fendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, or threat of great bodily harm; (5) oral copulation by force, violence, duress, menace, or threat of great bodily harm; (6) lewd acts on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of a residence; (19) robbery; (20) kidnapping; (21) taking of a hostage by an inmate of a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering or providing heroin, cocaine, or phencyclidine (PCP) to a minor; (25) any attempt to commit a crime listed in this subdivision other than an assault.

(d) 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.

SEC. 8. Sentencing. Section 1732.5 is added to the Welfare and Institutions Code, to read:

1732.5 Notwithstanding any other provision of law, no person convicted of murder, rape or any other serious felony, as defined in Section 1192.7 of the Penal Code, committed when he or she was 18 years of age or older shall be committed to Youth Authority.

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.

SEC. 9. Mentally Disordered Sex Offenders. Section 6331 is added to the Welfare and Institutions Code, to read:

6331. This article shall become inoperative the day after the election at which the electors adopt this section, except that the article shall continue to apply in all respects to those already committed under its provisions.

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.

SEC. 10. If any section, party, clause, or phrase of this measure or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.