

Measure B273

INSTRUCTIONS:

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This should take approximately 10 minutes.

BALLOT MEASURE B273

OVERVIEW

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

EXPANSION OF THE LEGAL RIGHTS OF CRIME VICTIMS AND RESTITUTION

Background

In June 1982, California voters approved Proposition U418, known as the “Victims’ Bill of Rights.” Among other changes, the proposition amended the Constitution and various state laws to grant crime victims the right to be notified of, to attend, and to state their views at, sentencing and parole hearings. Other separately enacted laws have created other rights for crime victims, including the opportunity for a victim to obtain a judicial order of protection from harassment by a criminal defendant.

Proposition U418 established the right of crime victims to obtain restitution from any person who committed the crime that caused them to suffer a loss. Restitution often involves replacement of stolen or damaged property or reimbursement of costs that the victim incurred as a result of the crime. A court is required under current state law to order full restitution unless it finds compelling and extraordinary reasons not to do so. Sometimes, however, judges do not order restitution. Proposition U418 also established a right to “safe, secure and peaceful” schools for students and staff of primary, elementary, junior high, and senior high schools.

Changes Made by This Measure

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

Notification and Participation of Victims in Criminal Justice Proceedings. As noted above, Proposition U418 established a legal right for crime victims to be notified of, to attend, and to state their views at, sentencing and parole hearings. This measure expands these legal rights to include all public criminal proceedings, including the release from custody of offenders after their arrest, but before trial. In addition, victims would be given the constitutional right to participate in other aspects of the criminal justice process, such as conferring with prosecutors on the charges filed. Also, law enforcement and criminal prosecution agencies would be required to provide victims with specified information, including details on victim's rights.

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

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

RESTRICTIONS ON EARLY RELEASE OF INMATES

Background

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

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

Collectively, the state's 58 counties spend over \$2.4 billion on county jails, which have a population in excess of 80,000. There are currently 20 counties where an inmate population cap has been imposed by the federal courts and an additional 12 counties with a self-imposed population cap. In counties with such population caps, inmates are sometimes released early to

comply with the limit imposed by the cap. However, some sheriffs also use alternative methods of reducing jail populations, such as confining inmates to home detention with Global Positioning System (GPS) devices.

Changes Made by This Measure

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

CHANGES AFFECTING THE GRANTING AND REVOCATION OF PAROLE

Background

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

Changes Made by This Measure

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

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

General Parole Revocation Procedures. This measure changes the board's parole revocation procedures for offenders after they have been paroled from prison. Under a federal court order in

a case known as *Valdivia v. Schwarzenegger*, parolees are entitled to a hearing within 10 business days after being charged with violation of their parole to determine if there is probable cause to detain them until their revocation charges are resolved. The measure extends the deadline for this hearing to 15 days. The same court order also requires that parolees arrested for parole violations have a hearing to resolve the revocation charges within 35 days. This measure extends this timeline to 45 days. The measure also provides for the appointment of legal counsel to parolees facing revocation charges only if the board determines, on a case-by-case basis, that the parolee is indigent and that, because of the complexity of the matter or because of the parolee's mental or educational incapacity, the parolee appears incapable of speaking effectively in his or her defense. Because this measure does not provide for counsel at all parole revocation hearings, and because the measure does not provide counsel for parolees who are not indigent, it may conflict with the *Valdivia* court order, which requires that all parolees be provided legal counsel.



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