

FILED
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Sacramento
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tcrowther
By _____, Deputy
Case Number:
34-2022-80003792

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Attorneys for Petitioner
LAURA PETERSON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LAURA PETERSON,

Petitioner,

vs.

CALIFORNIA BOARD OF PAROLE
HEARINGS,

Respondent,

LAWRENCE ELLIOT COTTLE,

Real Party in Interest.

Case No.

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND/OR PROHIBITION AND
COMPLAINT FOR INJUNCTIVE
RELIEF**

Cal. Code of Civ. Proc. 1085, 1103, 526(a)

Hearing Date:

Time:

Dept:

Judge:

Action Filed:

Petitioner, Laura Peterson, hereby petitions this Court for a peremptory writ of mandate and/or prohibition pursuant to California Code of Civil Procedure sections 1085 and/or 1103 directed to Respondent California Board of Parole Hearings enjoining Respondent from conducting a youth offender parole suitability hearing for Lawrence Elliot Cottle, Real Party in Interest, and other similarly situated prisoners sentenced to life without the possibility of parole notwithstanding Penal Code section 3051, subdivision (b)(4), as enacted by Senate Bill No. 394 (2017-2018 Reg. Sess.) 2017 Statutes, ch. 684,

VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND/OR PROHIBITION AND
COMPLAINT FOR INJUNCTIVE RELIEF

§ 1.5. In addition to a writ of mandate and/or prohibition, Petitioner also seeks the permanent issuance of injunctive relief pursuant to California Code of Civil Procedure, section 526, subdivision (a). In support thereof, Petitioner alleges the following:

THE PARTIES

1. Petitioner Laura Peterson's father, Alan Peterson Sr., was murdered on November 14, 1996. Real Party in Interest Lawrence Elliot Cottle was convicted of this crime and was sentenced to life without the possibility of parole pursuant to Penal Code section 190.5, subdivision (b). Petitioner Peterson is now and at all times mentioned in this petition a victim of this crime within the meaning of article I, section 28, subdivision (e) of the California Constitution.

2. Respondent, California Board of Parole Hearings, is a state agency with its principal office in Sacramento County, and is now and at all times mentioned in this petition as responsible for conducting youth offender parole suitability hearings. (Pen. Code, §§ 5075.1, 3051, subd. (a)(1).)

JURISDICTION AND VENUE

3. Superior courts have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. (Cal. Const., art. VI, § 10.)

4. This court has jurisdiction to issue the relief requested. (Code Civ. Proc., §§ 526, 527, 1085, 1103.)

5. Petitioner is a victim within the meaning of article I, section 28, subdivision (e), and is "beneficially interested" in ensuring that Real Party in Interest's life without the possibility of parole sentence as imposed by a court of law pursuant to Penal Code section 190.5, subdivision (b), remains intact and will not be superseded by SB 394. (Code Civ. Proc., §§ 1086, 1103; Cal. Const., art. I, § 28, subd. (a)(4)-(6).) Petitioner has a beneficial interest over and above that of the general public in that her constitutional rights to be "reasonably protected from the defendant" and to "a prompt and final conclusion of the case and any related post-judgment proceedings" have been violated by SB 394. (Cal. Const., art. I, § 28, subd. (b)(2), (9).) Petitioner has standing under both general principles

1 of standing and article I, section 28, subdivision (c)(1) of the California Constitution. In
2 addition, Petitioner is a citizen of California and has a right shared by all people that
3 sentences imposed “shall be carried out in compliance with the courts’ sentencing orders”
4 (Cal. Const., art. I, § 28, subd. (f)(5)), and therefore has “public interest” standing.

5 5. The Sacramento County Superior Court is the proper venue to hear this matter.
6 (Code Civ. Proc., § 395, subd. (a).)

7 **FACTUAL ALLEGATIONS**

8 6. On June 15, 1990, a majority of the California electorate enacted Proposition
9 115, the Crime Victims Justice Reform Act. Proposition 115 added subdivision (b) to
10 Penal Code 190.5. As enacted by Proposition 115, Penal Code section 190.5, subdivision
11 (b) provides that

12 “[t]he penalty for a defendant found guilty of murder in the first degree, in any case
13 in which one or more special circumstances enumerated in Section 190.2 or 190.25
14 has been found to be true under Section 190.4, who was 16 years of age or older
15 and under the age of 18 years at the time of the commission of the crime, shall be
confinement in the state prison for life without the possibility of parole or, at the
discretion of the court, 25 years to life.” (Exh. A.)

16 7. Real Party in Interest was sixteen (16) years old when he murdered Petitioner’s
17 father. In 1998, Real Party in Interest was prosecuted as an adult, convicted by a jury of
18 murder in the first degree with special circumstances and was sentenced to life without the
19 possibility of parole (LWOP) pursuant to Penal Code section 190.5, subdivision (b). (Exh.
20 B.)

21 8. In 2017, the California Legislature passed, and the Governor signed, Senate Bill
22 394 (SB 394) into law. SB 394 added subdivision (b)(4) to Penal Code section 3051. Penal
23 Code section 3051, subdivision (b)(4), as amended by SB 394, authorizes parole eligibility
24 during a prisoner’s twenty-fifth (25) year of incarceration for prisoners who were convicted
25 of offenses committed prior to turning eighteen (18) years old and sentenced to LWOP.
26 (Stats. 2017, ch. 684, § 1.5.)
27
28

1 9. Real Party in Interest qualified for and received an SB 394 youth offender parole
2 suitability hearing on June 10, 2021. At that hearing, Real Party in Interest was granted
3 parole. (Exh. C.)

4 10. On September 20, 2021, the full parole board reviewed the decision granting
5 parole to Real Party in Interest. (*Ibid.*) The full board vacated the decision to grant parole
6 and referred the matter for a new youth offender parole suitability hearing. (*Ibid.*)

7 11. On November 10, 2021, Petitioner received a letter from Respondent that
8 informed her that a new youth offender parole suitability hearing for Real Party in Interest
9 is scheduled for February 25, 2022. (Exh. D.)

10 12. Penal Code section 3051, subdivision (b)(4), as enacted by SB 394, applies to
11 prisoners sentenced to LWOP for offenses committed prior to turning eighteen (18) years
12 old. Penal Code section 190.5, subdivision (b), as enacted by Proposition 115, is the sole
13 avenue by which an offender under age eighteen (18) can be sentenced to LWOP. The
14 Legislature's enactment of Penal Code section 3051, subdivision (b)(4), requires an
15 opportunity for parole for prisoners who were validly sentenced to LWOP thereby
16 effectively nullifying the authorization for LWOP sentences in Penal Code section 190.5,
17 subdivision (b), an initiative statute.

18 13. The Legislature's addition of Penal Code section 3051, subdivision (b)(4), via
19 SB 394 requires a youth offender parole suitability hearing during a prisoner's twenty-fifth
20 (25) year of incarceration thereby superseding Real Party in Interest's and other similarly
21 situated prisoners' LWOP sentences that were validly imposed by a court of law pursuant
22 to Penal Code section 190.5, subdivision (b), as enacted by Proposition 115.

23 14. Penal Code section 3051, subdivision (b)(4), changes all past, present, and
24 future Penal Code 190.5, subdivision (b) LWOP sentences into life with the possibility of
25 parole sentences by operation of law. A legislative act amends an initiative statute if "it
26 prohibits what the initiative authorizes, or authorizes what the initiative prohibits." (*People*
27 *v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571; see also *People v. Kelly* (2010) 47
28 Cal.4th 1008, 1026-1027.)

1 15. Penal Code section 3051, subdivision (b)(4), as enacted by SB 394 indirectly
2 amends Penal Code section 190.5, subdivision (b), by prohibiting what that section
3 permits. Because SB 394 prohibits a sentence that Proposition 115 authorizes, SB 394
4 amends the statutory provisions of Proposition 115.

5 16. Penal Code 190.5, subdivision (b), is an initiative statute enacted by
6 Proposition 115. Article II, section 10, subdivision (c) of the California Constitution limits
7 the legislature's authority to amend initiative statutes without voter approval. An initiative
8 statute can be amended by the legislature only if expressly authorized to do so by the
9 initiative itself and it must be accomplished in strict compliance with the terms stated
10 therein. (*Pearson, supra*, 48 Cal.4th at p. 568; *Proposition 103 Enforcement Project v.*
11 *Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-1484.)

12 17. Penal Code section 190.5, subdivision (b) is the only avenue by which a
13 juvenile offender can be sentenced to LWOP. Proposition 115 expressly limited the
14 Legislature's authority to amend its statutory provisions. (Voter Information Guide,
15 Primary Elec. (June 5, 1990) text of Prop. 115, § 30, p. 69.) (Exh. A.) To amend without
16 voter approval, the Legislature must attain the concurrence of two-thirds (2/3) of the
17 membership in each house. (*Ibid.*)

18 18. SB 394 passed in the Senate with twenty-eight (28) ayes, nine (9) noes, and
19 three (3) abstains. SB 394 passed in the Assembly with forty-four (44) ayes, thirty (30)
20 noes, and five (5) abstains. (Exh. E.) As there are eighty (80) members of the Assembly
21 (Cal. Const., art. IV, § 2, subd. (a)(2)), Penal Code 3051, subdivision (b)(4), as enacted by
22 SB 394 did not pass by a vote of two-thirds (2/3) of the members in the Assembly. (Exh.
23 E.)

24 19. SB 394 was not a properly passed amendment of Proposition 115. SB 394
25 requires a youth offender parole eligibility hearing during a prisoner's twenty-fifth (25)
26 year of incarceration and thereby eliminates a true sentence of LWOP from being served by
27 a juvenile offender convicted of first-degree special circumstances murder. SB 394 thereby
28 amounts to an unconstitutional overruling of the electorate insofar as it changes an

1 offender's original life without the possibility of parole sentence into a life with the
2 possibility of parole sentence. (See *People v. Franklin* (2016) 63 Cal.4th 261, 281.)

3 20. A discretionary LWOP sentence imposed upon a murderer under the age of
4 eighteen (18) is not unconstitutional. In *Jones v. Mississippi* (2021) 141 S.Ct. 1307, 1313,
5 209 L.Ed.2d 390, 399, the United States Supreme Court clarified that discretion is
6 "constitutionally sufficient" and no additional findings are constitutionally required.
7 Subdivision (b) of section 190.5, as added by Proposition 115, provides for discretionary
8 sentencing. (*People v. Guiterrez* (2014) 58 Cal.4th 1354, 1387.)

9 21. SB 394 invalidly amended Proposition 115 in violation of the California
10 Constitution and is void to the extent the two enactments conflict.

11 **FIRST CAUSE OF ACTION**

12 **(WRIT OF TRADITIONAL MANDATE AND/OR PROHIBITION)**

13 22. Petitioner realleges paragraphs 1 through 21 of this petition as though fully set
14 forth herein.

15 23. Petitioner seeks a traditional writ of mandate and/or prohibition pursuant to
16 Code of Civil Procedure sections 1085 and/or 1103 to enjoin Respondent from conducting
17 a youth offender parole hearing for Real Party in Interest and other similarly situated
18 prisoners sentenced to life without the possibility of parole pursuant to Penal Code section
19 190.5, subdivision (b).

20 24. A writ of prohibition may be issued by this court to "arrest the proceedings of
21 any tribunal, corporation, board, or person exercising judicial functions, when such
22 proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board,
23 or person." (Code Civ. Proc., §§ 1102, 1103, subd. (a).) "The constitutionality of a statute
24 or ordinance may be tested by prohibition on the ground that invalidity of the legislation
25 goes to the jurisdiction of the court to proceed to try the case." (*Rescue Army v. Municipal*
26 *Court* (1946) 28 Cal.2d 460, 462.) Issuance of a writ of prohibition will preserve the status
27 quo between the parties and is necessary to prevent Respondent from conducting a youth
28 offender parole hearing for Real Party in Interest and other similarly situated prisoners

1 pursuant to an unconstitutional statute. (*See Union Pacific R.R. Co. v. State Bd. of*
2 *Equalization* (1989) 49 Cal.3d 138, 158.)

3 25. Issuance of a writ of mandate and/or prohibition is indispensable to the
4 enforcement of Petitioner's rights. Petitioner does not have a plain, speedy, and adequate
5 remedy in the ordinary course of law other than the relief sought in this petition.

6 SECOND CAUSE OF ACTION

7 (INJUNCTIVE RELIEF)

8 26. Petitioner realleges paragraphs 1 through 25 of this petition as though fully set
9 forth herein.

10 27. The issuance of injunctive relief is necessary and appropriate. Pursuant to the
11 passage of SB 394, a youth offender parole suitability hearing will be held by Respondent
12 on February 25, 2022, to determine whether Real Party in Interest should be released on
13 parole. (Exh. D.)

14 28. Code of Civil Procedure section 526 authorizes this court to issue injunctive
15 relief. Such relief is warranted when the moving party (1) "is entitled to the relief
16 demanded, and the relief, or any part thereof, consists in restraining the commission or
17 continuance of the act complained of, either for a limited period or perpetually"; (2) "the
18 commission or continuance of some act during the litigation would produce waste, or great
19 or irreparable injury, to a party to the action"; or (3) when "a party to the action is doing, or
20 threatens, or is about to do, or is procuring or suffering to be done, some act in violation of
21 the rights of another party to the action respecting the subject of the action, and tending to
22 render the judgment ineffectual." (Code Civ. Proc., § 526, subd. (a)(1)-(3).)

23 29. Petitioner and other similarly situated crime victims stand to suffer immediate
24 irreparable injury unless this court enjoins all Penal Code section 3051, subdivision (b)(4)
25 youth offender parole hearings. Real Party in Interest initially received a youth offender
26 parole suitability hearing in June 2021 and was granted parole. The full parole board
27 vacated the panel's decision. A rescheduled hearing is set for February 25, 2022. No money
28 damages or other legal remedy could adequately compensate Petitioner and other similarly

1 situated crime victims for the irreparable harm that Respondent will cause, continues to
2 cause, and threatens to cause by conducting youth offender parole suitability hearings for
3 inmates validly sentenced to LWOP.

4 30. The exhibits filed with this Petition are true and correct copies of the original
5 documents on file in the underlying criminal case or gained from a government website.

6 WHEREFORE, Petitioner requests relief as follows:

7 1. Declare Penal Code section 3051, subdivision (b)(4), as amended by SB 394,
8 unconstitutional;

9 2. Issue a peremptory writ of mandate and/or prohibition to Respondents to desist
10 and refrain from enforcing Penal Code section 3051, subdivision (b)(4), as amended by SB
11 394, to Real Party in Interest and to similarly situated prisoners statewide;

12 3. For a permanent injunction barring Respondent from conducting youth offender
13 parole hearings for Real Party in Interest and other similarly situated prisoners statewide
14 pursuant to Penal Code section 3051, subdivision (b)(4), as enacted by SB 394.

15 4. That Petitioner be awarded attorneys' fees;

16 5. That Petitioner be awarded costs of the suit; and

17 6. That Petitioner be granted such other and further relief as the court may deem
18 just and equitable.

19 Dated: January 6, 2022

Respectfully submitted,

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21 By: KYMBERLEE STAPLETON
22 *Attorney for Petitioner*
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VERIFICATION

I, LAURA PETERSON, declare as follows:

I am the Petitioner in this action. I have read the foregoing Petition for Peremptory Writ of Mandate and/or Prohibition and Complaint for Injunctive Relief and know its contents. All facts alleged in the Petition are true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of _____, 2022, at _____, California.

LAURA PETERSON

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PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing occurred. The following facts are within my first-hand and personal knowledge and if called as a witness, I could and would testify thereto.

2. My business address is 2131 L Street, Sacramento, CA 95816.

On January 6, 2022, I served the foregoing document entitled:

VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND/OR PROHIBITION AND COMPLAINT FOR INJUNCTIVE RELIEF

on each person named below by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail addressed as follows, and electronically emailed a digital copy to the email address indicated:

3. Name and address of each person served:

Nelson R. Richards Office of the State Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244	Lawrence Elliot Cottle-- CDCR No. K87775 Ironwood State Prison P.O. Box 2199 Blythe, CA 92226
Board of Parole Hearings P.O. Box 4036 Sacramento, CA 95812-4036	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 6, 2022, at Sacramento, California.

INDEX OF EXHIBITS

- Exhibit A. Voter Information Guide, Primary Election (June 5, 1990) text of Prop. 115
- Exhibit B. Abstract of Judgment - Prison Commitment Indeterminate Sentence
- Exhibit C. Inmate Board Actions
- Exhibit D. Notice of Hearing to Laura Peterson
- Exhibit E. Assembly Daily Journal

EXHIBIT A

Voter Information Guide, Primary Election (June 5, 1990) text of Prop. 115

Official Title and Summary

CRIMINAL LAW. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Amends state Constitution regarding criminal and juvenile cases: affords accused no greater constitutional rights than federal Constitution affords; prohibits post-indictment preliminary hearings; establishes People's right to due process and speedy, public trials; provides reciprocal discovery; allows hearsay in preliminary hearings. Makes statutory changes, including: expands first degree murder definition; increases penalty for specified murders; expands special circumstance murders subject to capital punishment; increases penalty for minors convicted of first degree murder to life imprisonment without parole; permits probable cause finding based on hearsay; requires court to conduct jury examination. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: The net fiscal effect of this measure is unknown. The measure makes several significant changes to the criminal justice system. How the measure will be implemented and interpreted is unknown. There may be only a minor fiscal impact on state and local governments, or there may be a major fiscal impact.

Analysis by the Legislative Analyst

Background

The California Constitution guarantees citizens certain rights which are not dependent on those guaranteed by the United States Constitution. Some of these rights have been judicially interpreted to be broader than the rights guaranteed under the United States Constitution.

Current state law contains the judicial procedures that must be followed in criminal cases to protect the rights of victims and the accused. These procedures include requirements regarding preliminary court hearings, trials, the use of hearsay as evidence, information disclosure by attorneys, questioning of prospective jurors by attorneys, and the joining of criminal cases.

Under California law, the crime of first-degree murder is defined as one which is deliberate, or takes place during the commission of certain other crimes, or involves torture or the use of poison or certain destructive devices. In general, first-degree murder is punishable by 25 years to life imprisonment with the possibility of parole. If "special circumstances" are found or the commission of a specific crime is involved, adults may be sentenced to life imprisonment without the possibility of parole, or to death. Minors who were 16 or 17 years of age at the time of the crime and who are tried as adults, may not be sentenced to life imprisonment without the possibility of parole or to death.

Proposal

The proposal makes numerous significant and complex changes in criminal law and in the judicial procedures that must be followed in criminal cases. The more important of these changes are summarized below.

Rights of Defendants in Criminal Cases. The measure provides that the California Constitution shall not be construed by the courts to afford greater rights to criminal defendants, including minors, than those afforded by the Constitution of the United States. These rights include the right to equal protection of the laws, to due process, to the assistance of counsel, to be personally

present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment.

First Degree Murder and Special Circumstances. This measure:

- Expands the definition of first-degree murder to include murder committed during the commission or attempted commission of additional serious crimes.
- Expands the list of "special circumstances" to include a variety of serious crimes, such as the killing of a witness to prevent his or her testimony in certain juvenile proceedings.
- Prohibits the dismissal of a special circumstance finding by a judge.
- Allows minors who are 16 or 17 years of age at the time of the crime and convicted of first-degree murder with special circumstances to be punished by life imprisonment *without* the possibility of parole.

Crime of Torture. This measure creates a new crime of torture which would be punished by life imprisonment with the possibility of parole.

Preliminary Hearings. This measure prohibits a preliminary hearing when a felony is prosecuted by grand jury indictment.

Speedy Trial. Generally, this measure:

- Provides the people of California with the right to due process of law and to a speedy and public trial.
- Requires the court to assign felony cases only to defense attorneys who will be ready to proceed within specified time limits.
- Requires felony trials to be set within 60 days of the defendant's arraignment except upon a showing of good cause.

- Establishes a court review procedure for felony cases when preliminary hearings or trials are scheduled beyond the time specified by law or postponed "without good cause." Petitions for a court review would have priority over all other cases in the court.

Disclosure of Information. This measure:

- Changes the rule under which prosecutors and defense attorneys must reveal information to each other in their prospective criminal cases.
- Repeals the requirement that a copy of the arrest report be delivered to the defendant at the initial court appearance, or within two days of the appearance.

Hearsay Evidence. This measure allows the use of hearsay evidence at preliminary hearings if these out-of-court statements are introduced through the testimony of certain trained and experienced law enforcement officers.

Examination of Prospective Jurors. This measure makes major changes in the way juries are selected for criminal trials. Specifically, the measure:

- Repeals a requirement which generally permits reasonable examination of prospective jurors by counsel for the people and for the defendant for

purposes of making peremptory challenges and challenges for cause.

- Requires the court to conduct the examination of prospective jurors, but allows further examination by the parties or the court itself upon a showing of good cause.
- Requires that the examination of prospective jurors be conducted only in aid of the exercise of challenges for cause.

Joining Criminal Cases. This measure:

- Prohibits the Constitution from being construed by the courts to prohibit the joining of criminal cases as prescribed by statute.
- Prohibits the severing of jointly charged cases due to the unavailability of or unpreparedness of one or more defendants, except as specified.

Fiscal Effect

The net fiscal effect of this measure is unknown. The measure makes several significant changes to the criminal justice system. How the measure will be implemented and interpreted is unknown. There may be only a minor fiscal impact on state and local governments, or there may be a major fiscal impact.

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 amends the Constitution by amending and adding sections thereto, repeals and adds sections to the Code of Civil Procedure, adds a section to the Evidence Code, amends, repeals, and adds sections to the Penal Code; therefore, existing 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

SECTION 1. (a) We the people of the State of California hereby find that the rights of crime victims are too often ignored by our courts and by our State Legislature, that the death penalty is a deterrent to murder, and that comprehensive reforms are needed in order to restore balance and fairness to our criminal justice system.

(b) In order to address these concerns and to accomplish these goals, we the people further find that it is necessary to reform the law as developed in numerous California Supreme Court decisions and as set forth in the statutes of this state. These decisions and statutes have unnecessarily expanded the rights of accused criminals far beyond that which is required by the United States Constitution, thereby unnecessarily adding to the costs of criminal cases, and diverting the judicial process from its function as a quest for truth.

(c) The goals of the people in enacting this measure are to restore balance to our criminal justice system, to create a system in which justice is swift and fair, and to create a system in which violent criminals receive just punishment, in which crime victims and witnesses are treated with care and respect, and in which society as a whole can be free from the fear of crime in our homes, neighborhoods, and schools.

(d) With these goals in mind, we the people do hereby enact the Crime Victims Justice Reform Act.

SEC. 2. Section 14.1 is added to Article I of the California Constitution, to read:

SEC. 14.1. *If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing.*

SEC. 3. Section 24 of Article I of the California Constitution is amended to read:

SEC. 24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this state in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States.

This declaration of rights may not be construed to impair or deny others retained by the people.

SEC. 4. Section 29 is added to Article I of the California Constitution, to read:

SEC. 29. *In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial.*

SEC. 5. Section 30 is added to Article I of the California Constitution, 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.*

(Continued on page 65)

Argument in Favor of Proposition 115

YOUR MOST BASIC RIGHT AS AN AMERICAN IS TO BE SAFE FROM VIOLENCE AND FREE FROM FEAR.

But while politicians keep talking about tougher laws, your chances of becoming a victim keep climbing.

Why?

For years, politicians in Sacramento have refused to enact tougher laws, like those in other states and the federal law, that permit hardened criminals to get a fair but prompt trial without the useless delays that frustrate criminal justice in California.

Why? Because defense lawyers love delays. Witnesses die or their memories fade. Busy people avoid drawn-out jury service. Prolonged trials go haywire. With judges and prosecutors frustrated by delay, plea bargaining runs rampant. And, the longer the trial, the higher the legal fees.

ONE COURT-APPOINTED DEFENSE LAWYER RECENTLY RECEIVED \$515,000 IN TAXES YOU PAID. MANY OTHERS ROUTINELY RECEIVE SIX-FIGURE INCOMES.

Proposition 115 does several needed things:

ITS "NIGHTSTALKER" COMPONENT conforms California's criminal law to federal procedures, bringing California back into the mainstream of American criminal justice. This will mean major time savings for the typical California criminal proceeding. It took an incredible four years just to bring the "Nightstalker" to justice! Imagine how much that cost you, the taxpayer, and how much anguish it caused his surviving victims through multiple, drawn-out court appearances.

ITS "SINGLETON" TORTURE PROVISION assures that no criminal will ever again rape a young girl and hack off her arms, and serve only a minimal punishment, such as the 7½ years Singleton served. Instead, Proposition 115 will send such a criminal to prison for life.

ITS "BIRD COURT" DEATH PENALTY PROVISIONS improve our death penalty law and overturn decisions by Rose

Bird and her allies which made it nearly inoperative.

PROPOSITION 115 HAS THE OVERWHELMING SUPPORT OF CALIFORNIA'S DISTRICT ATTORNEYS, POLICE CHIEFS, AND SHERIFFS.

It also has the support of thousands of innocent victims of crime who have been the objects of violence, or have lost loved ones, and been dragged through the courts for years by the delaying tactics of highly paid lawyers and an unfeeling legal bureaucracy.

The same people who opposed the "Victims Bill of Rights," the death penalty, and the ouster of Rose Bird from the Supreme Court—a small but vocal cadre of liberal politicians, defense lawyers, and law professors—are trying to discredit this much-needed reform.

They falsely claim it may curb abortion.

DON'T BE FOOLED!

The authoritative non-partisan Counsel to the California State Legislature has ruled Proposition 115 affects only the rights "to privacy" of criminals on trial—not your privacy rights, or the constitutionally guaranteed civil right of a woman to an abortion—and further ruled that any doubt raised by opponents is eliminated by this simple statement we the proponents make that our intent is not to limit in any way a woman's right to choose to have an abortion.

Proposition 115 simply remedies gross inequities and will bring more violent criminals to justice. PLEASE HELP CALIFORNIA LAW ENFORCEMENT AND CRIME VICTIM BY VOTING YES.

PETE WILSON

U.S. Senator

CALIFORNIA DISTRICT ATTORNEY'S ASSOCIATION

COLLENE THOMPSON CAMPBELL

Chair, Memory of Victims Everywhere (M.O.V.E.)

Rebuttal to Argument in Favor of Proposition 115

All of us are angry about escalating violent crime.

Proposition 115 is a political appeal to our anger by politicians running for office. In their rush to qualify Proposition 115 for the ballot, they overlooked provisions which compromise our right to an abortion, to free speech and to a fair trial.

Proposition 115 supporters tell us to ignore our doubts. Their horror stories of "Nightstalker" and "Singleton" suggest only the most vicious criminals will be affected.

THE TRUTH IS THE RIGHTS OF ALL CALIFORNIANS ARE JEOPARDIZED.

Proposition 115 eliminates California's Constitutional RIGHT OF PRIVACY which protects a women's right of choice. If *Roe v. Wade* is overturned by the U.S. Supreme Court, the passage of Proposition 115 threatens the right of women to safe and legal abortions.

Senator Wilson's denial is not convincing. He says his "intent" is "authoritative," but to whom? We do not look forward to another judge somewhere deciding what Proposition 115 means and whether we lose our right of choice.

WE HAVE A CONSTITUTIONALLY GUARANTEED

RIGHT OF CHOICE TODAY. LET'S KEEP IT.

Proposition 115's "hidden flaws" don't stop with CHOICE. Our rights to religious privacy, doctor-patient confidentiality, and sexual privacy are also threatened.

Prosecutors face difficulties with complicated cases like McMartin or "Night Stalker." Let's solve the problem without causing judicial chaos, socking the taxpayer with millions of dollars of new court expenses and eroding our privacy rights.

PROPOSITION 115 IS FLAWED. WE CAN'T GIVE UP OUR PRIVACY RIGHTS. VOTE NO ON 115.

MICHAEL G. W. LEE

President, San Francisco Bar Association

WILLIAM R. ROBERTSON

Executive Secretary-Treasurer, Los Angeles County Federation of Labor (AFL-CIO)

LINDA M. TANGREN

State Chair, California National Women's Political Caucus

Argument Against Proposition 115

All Californians want accused criminals brought to trial swiftly with minimum inconvenience and discomfort for their victims. But in politics what starts with good intentions often ends with the taxpayer getting something we *don't* want.

PROPOSITION 115 IS TOO BROAD AND COMPLICATED.

In order to speed up trials for those charged with felony crimes in state courts, Proposition 115 asks all Californians to make big sacrifices. Why should we become victims of the Crime Victims Justice Reform Act?

PROPOSITION 115 TAKES AWAY OUR STATE CONSTITUTIONAL RIGHT TO PRIVACY.

- **THE RIGHT TO MAKE THE PERSONAL DECISION TO CHOOSE AN ABORTION WILL BE THREATENED.** Until now our privacy rights have protected our right to choose abortion free from government intrusion. If Proposition 115 passes and the U.S. Supreme Court overrules *Roe v. Wade*, women and their doctors will be open to prosecution for participating in an abortion.

Proposition 115 erases California's constitutional privacy right and substitutes the opinions of any five Justices of the U.S. Supreme Court.

- **DOCTORS AND PATIENTS WILL HAVE A MORE DIFFICULT TIME KEEPING THEIR MEDICAL RECORDS PRIVATE.**
- **RELIGIOUS SERVICES WILL NO LONGER HAVE CALIFORNIA'S VIGOROUS PRIVACY PROTECTION, THUS UNDERMINING EVERYONE'S RELIGIOUS FREEDOM.**
- **WE WILL NO LONGER BE PROTECTED FROM THOSE WHO WOULD VIOLATE OUR SEXUAL PRIVACY.** IF PROPOSITION 115 PASSES, CALIFORNIA POLITICIANS WILL BE FREE TO CRIMINALIZE CERTAIN SEXUAL PREFERENCES AS HAPPENS TODAY IN GEORGIA AND OTHER STATES.
- **CRIMINAL TRESPASS CHARGES COULD AWAIT THOSE EXERCISING THEIR FREE SPEECH RIGHTS.** Our right to pass out leaflets and circulate petitions at shopping malls would no longer be protected by the California Constitution.

Proposition 115 treats us all like criminals in order to get tough with those accused of real crimes.

PROPOSITION 115 COSTS TOO MUCH.

- **CALIFORNIA TAXPAYERS WILL HAVE TO PAY MILLIONS OF DOLLARS IN NEW TAXES** to reduce trial delays for only 5% of those charged with crimes. 95% plead guilty and don't go to trial. The additional lawyers, judges and court rooms needed to implement Proposition 115 will produce an unfair burden on taxpayers.

- **EVEN WITH MORE TAX REVENUES, COURT CONGESTION WILL WORSEN.** More trials may result when District Attorneys eliminate preliminary hearings. Preliminary hearings give those charged with crimes their first look at how strong the case is against them. In California, after preliminary hearings 95% plead guilty. **WITHOUT PRELIMINARY HEARINGS THE RESULT MAY BE FEWER GUILTY PLEAS, MORE TRIALS, MORE COURT CONGESTION AND SLOWER JUSTICE.**

The good intentions of the initiative's backers is not the issue. However well-meaning, they carelessly open a can of worms. It is a complicated business to restructure the judicial system and the sponsors of Proposition 115 create far more serious problems than we have now.

IT DIDN'T HAVE TO BE WRITTEN THIS WAY. PROPOSITION 115 IS NOT A "VICTIMS' RIGHTS INITIATIVE." WE SAY START OVER. IT'S NOT WORTH THE SACRIFICES AND THE COST. VOTE NO ON PROPOSITION 115.

ROBIN SCHNEIDER

Executive Director

California Abortion Rights Action League (CARAL)

SHIRLEY HUFSTEDLER

Former Judge, U.S. Court of Appeals for the 9th Circuit

Former Secretary of Education

W. BENSON HARER, JR., M.D.

Chairman, District 9 (Calif.)

American College of Obstetricians and Gynecologists

Rebuttal to Argument Against Proposition 115

CALIFORNIA WOMEN ARE GUARANTEED REPRODUCTIVE CHOICE AND OTHER "PRIVACY RIGHTS" BY OUR STATE CONSTITUTION.

Therefore, even if the U.S. Supreme Court overturned *Roe vs. Wade*, and then our Legislature somehow passed legislation against abortion, neither the legislation nor the Court's decision could restrict a California woman's RIGHT of reproductive choice.

A CALIFORNIA WOMAN'S CONSTITUTIONALLY GUARANTEED RIGHT OF CHOICE CANNOT BE TAKEN AWAY EXCEPT BY A FUTURE VOTE OF THE PEOPLE EXPRESSLY REPEALING THAT RIGHT. THAT'S NOT ABOUT TO HAPPEN IN 70% PRO-CHOICE CALIFORNIA.

This initiative doesn't criminalize or permit criminalization of any activity protected by California's constitutional "right to privacy." IT WAS CAREFULLY WRITTEN BY 50 PROSECUTORS TO APPLY ONLY TO CRIMINAL TRIALS, NOT TO ABORTION, RELIGION, OR FREE SPEECH. IT'S ENDORSED BY EVERY DISTRICT ATTORNEY IN CALIFORNIA—BOTH DEMOCRATS AND REPUBLICANS.

Opponents cynically raise this false objection to frighten and mislead voters into believing 115 threatens their rights.

BALONEY.

THE REAL OPPONENTS—THOSE FRONTING THE MONEY TO ATTACK 115 WITH FALSE, MISLEADING TELEVISION ADS—ARE THE SAME CRIMINAL DEFENSE AND COURT APPOINTED LAWYERS WHO EARN FAT GOVERNMENT FEES, PLUS A FEW LIBERAL JUDGES AND POLITICIANS WHO SYMPATHIZE MORE WITH CRIMINALS THAN VICTIMS.

Studies show shorter trials under 115 mean reduced lawyer fees and taxpayers cost. Yet opponents claim shorter trials will cost more than the McMartin case.

Opponents promise a "corrected" crime initiative in November. But they deliberately combined their initiative with a huge tax increase they *know* voters *won't* approve.

Don't let them con you. Vote YES.

PETE WILSON

U.S. Senator

WILLIAM G. PLESTED III, M.D.

President, California Medical Association

WOMEN PROSECUTORS OF CALIFORNIA

Proposition 113: Text of Proposed Law

This law proposed by Senate Bill 2751 (Statutes of 1988, Chapter 1094) expressly amends existing sections of the law; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO INITIATIVE ACT

An act to amend an initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith" approved by the electors November 7, 1922, by amending Sections 12 and 15 thereof, relating to the practice of chiropractic, the amendment to take effect upon the approval thereof by the electors, and providing for the submission thereof to the electors pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

SECTION 1. Section 12 of the act cited in the title is amended to read:

Sec. 12. *Licenses issued under the provisions of this section expire at 12 midnight on the last day of the month of birth of licentiates of the board.*

On or before July 1, 1991, the board shall establish regulations for the administration of a birth month renewal program. Each person practicing chiropractic within this state shall, on or before the ~~first last~~ day of ~~January~~ *their month of birth* of each year, after a license is issued to ~~him~~ *them* as herein provided, pay to ~~said~~ the Board of Chiropractic Examiners a renewal fee of not more than one hundred fifty dollars (\$150) as determined by the board. The secretary shall ; ~~on or before November 1st of each year,~~ mail to all licensed chiropractors in this state, ~~on or before 60 days prior to the last day of the month of their birth each year,~~ a notice that the renewal fee will be due on or before the ~~first last~~ day of ~~January~~ *the month of their birth* next following. Nothing in this act shall be construed to require the receipts to be recorded in like manner as original licenses. The failure, neglect or

refusal of any person holding a license or certificate to practice under this act in the State of California to pay ~~said~~ the annual fee during the time ~~his or her~~ *their* license remains in force shall, after a period of 60 days from the ~~first last~~ day of ~~January each year, ipso facto,~~ *the month of their birth automatically* work a forfeiture of his or her license or certificate, and it shall not be restored except upon the written application therefor and the payment to the ~~said~~ board of a fee of twice the annual amount of the renewal fee in effect at the time the restoration application is filed except that ~~such~~ a licensee who fails, refuses or neglects to pay ~~such~~ the annual tax within a period of 60 days after the ~~first last~~ day of ~~January~~ *the month of his or her birth* of each year shall not be required to submit to an examination for the reissuance of ~~such~~ the certificate.

SEC. 2. Section 15 of the act cited in the title is amended to read:

Sec. 15. Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain a license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor" or "D.C." or any word or title to induce, or tending to induce belief that he or *she* is engaged in the practice of chiropractic, without first complying with the provisions of this act; or any licensee under this act who uses the word "doctor" or the prefix "Dr." without the word "chiropractor," or "D.C." immediately following his or *her* name, or the use of the letters "M.D." or the words "doctor of medicine," or the term "surgeon," or the term "physician," or the word "osteopath," or the letters "D.O." or any other letters, prefixes or suffixes, the use of which would indicate that he or she was practicing a profession for which he or *she* held no license from the State of California, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ~~fifty dollars one hundred dollars (\$100)~~ *fifty dollars (\$750)* and not more than ~~two hundred dollars seven hundred fifty dollars (\$750)~~ , or by imprisonment in the county jail for not less than ~~thirty days~~ *ninety days* nor more than ~~ninety days~~ *six months* , or by both fine and imprisonment .

Proposition 115: Text of Proposed Law

Continued from page 33

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.

SECTION 6. Section 223 of the Code of Civil Procedure is repealed.

~~223.~~ In criminal cases:

(a) It shall be the duty of the trial court to examine the prospective jurors to select a fair and impartial jury. Except as provided in Section 223.5, the trial court shall permit reasonable examination of prospective jurors by counsel for the people and for the defendant; such examination to be conducted orally and directly by counsel.

(b) In each case it shall be the duty of the trial judge to provide for a voir dire process as speedy, focused, and informative as possible; and to protect prospective jurors from undue harassment and embarrassment and from inordinately extensive, repetitive, or unfocused examinations.

(c) In discharging its duties, the court shall have discretion and control with respect to the form and subject matter and duration of voir dire examination. In exercising that discretion and control, the trial judge shall be guided by, among other criteria, the following:

(1) The nature of the charges and the potential consequences of a conviction.

(2) Any unique or complex elements, legal or factual, in the case.

(3) The individual responses or conduct of jurors which may reveal attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case.

(4) The attorneys' need, under the circumstances, for information on which to exercise peremptory challenges intelligently.

(5) The trial court shall not permit questions which the trial court concludes would, as their sole purpose, do any of the following:

(1) Educate the jury panel to the particular facts of the case.

(2) Compel the jurors to commit themselves to vote in a particular way.

(3) Prejudice the jury for or against any party.

(4) Argue the case.

(5) Indoctrinate the jury.

(6) Instruct the jury in a matter of law.

(7) Attempt to accomplish any other improper purpose.

(c) The trial court shall require that questions be phrased by counsel in a neutral and nonargumentative form.

SEC. 7. Section 223 is added to the Code of Civil Procedure, to read:

223. In a criminal case, the court shall conduct the examination of

prospective jurors. However, the court may permit the parties, upon a showing of good cause, to supplement the examination by such further inquiry as it deems proper, or shall itself submit to the prospective jurors upon such a showing, such additional questions by the parties as it deems proper. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases.

Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

The trial court's exercise of its discretion in the manner in which voir dire is conducted shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.

SEC. 7.5. Section 223.5 of the Code of Civil Procedure is repealed.

~~223.5.~~ (a) As a pilot project applicable solely to criminal cases in the superior courts in Fresno and Santa Cruz Counties during the period July 1, 1988, to June 30, 1991, inclusive, all questions designed solely for assisting in the intelligent exercise of the right to peremptory challenge and not applicable to the determination of implied or actual bias, shall be propounded by the court. If such a question is requested by the prosecution or by counsel for the defense and is one of the standardized questions developed by the Task Force on Voir Dire, the court shall propound the question unless the court determines that the question is clearly inappropriate. If a nonstandardized question is proposed by the prosecution or by counsel for the defense, the court may propound the question in its discretion.

(b) The Task Force on Voir Dire shall consist of eight members who shall serve without compensation; two of whom shall be appointed by the Judicial Council; two by the Governor; two by the Speaker of the Assembly; and two by the Senate Rules Committee. All appointees shall have been members of the State Bar for at least five years prior to their appointment. The Judicial Council may provide staff to assist the task force.

All appointments to the Task Force on Voir Dire shall be made on or before March 1, 1988. The task force shall submit to the pilot project counties a list of standardized questions which meet the purposes of subdivision (a) on or before July 1, 1988.

(c) Notwithstanding the provisions of Section 206, the Judicial Council and any other bona fide research or research organization shall be permitted access to any data regarding the conduct or evaluation of the pilot project. On or before January 1, 1992, the Judicial Council shall report to the Legislature on the effects of the pilot project on the efficiency in jury selection and on any effect on the conviction rate for

particular crimes compared to a similar prior period in each pilot project county.

SEC. 8. Section 1203.1 is added to the Evidence Code, to read:

1203.1. Section 1203 is not applicable if the hearsay statement is offered at a preliminary examination, as provided in Section 872 of the Penal Code.

SEC. 9. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 238, Section 286, 288, 288a, or 289, is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 10. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found under Section 190.4, to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.35, 830.36, 830.4, 830.5, 830.5a, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his or her duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his or her duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a federal law enforcement officer or agent, engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a fireman as defined in Section 245.1, who while engaged in the course of the performance of his or her duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a fireman engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission, or attempted commission or of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(12) The victim was a judge or former judge of any court of record the local, state or federal system in the State of California or in any other state of the United States and the murder was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(13) The victim was an elected or appointed official or former official of the ~~Federal Government~~ federal government, a local or State state government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity: as. As utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was in accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211 or 212.5.

(ii) Kidnapping in violation of Sections Section 207 and or 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of subdivision (b) of Section 447 451.

(ix) Train wrecking in violation of Section 219.

(x) Mayhem in violation of Section 203.

(xi) Rape by instrument in violation of Section 289.

(18) The murder was intentional and involved the infliction of torture. For the purpose of this section torture requires proof of the infliction of extreme physical pain no matter how long its duration.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (19) of subdivision (a) of this section has been charged and specially found under Section 190.4 to be true. Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer as to whom such special circumstance has been found to be true under Section 190.4 need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in state prison for a term of life without the possibility of parole.

(c) Every person not the actual killer who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a), which felony results in the death of some person or persons, who is found guilty of murder in the first degree therefor, shall suffer death or confinement in state prison for life without the possibility of parole, in any case in which a special circumstance enumerated in paragraph (17) of subdivision (a) of this section has been found to be true under Section 190.4.

(e) The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

SEC. 11. Section 190.41 is added to the Penal Code, to read:

190.41. Notwithstanding Section 190.4 or any other provision of law, the corpus delicti of a felony-based special circumstance enumerated in paragraph (17) of subdivision (a) of Section 190.2 need not be proved independently of a defendant's extrajudicial statement.

12. Section 190.5 of the Penal Code is amended to read:

1. (a) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

(b) The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life.

(c) The trier of fact shall determine the existence of any special circumstance pursuant to the procedure set forth in Section 190.4.

SEC. 13. Section 206 is added to the Penal Code, to read:

206. Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture.

The crime of torture does not require any proof that the victim suffered pain.

SEC. 14. Section 206.1 is added to Penal Code, to read:

206.1. Torture is punishable by imprisonment in the state prison for a term of life.

SEC. 15. Section 859 of the Penal Code is amended to read:

859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the defendant shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor. The prosecuting attorney shall deliver to, or make accessible for inspection and copying by, the defendant or counsel, copies of the police, arrest, and crime reports, upon the first court appearance of counsel; or upon a determination by a magistrate that the defendant can represent himself or herself. If unavailable to the prosecuting attorney at the time of that appearance or determination, the reports shall be delivered within two calendar days. Portions of those reports containing privileged information need not be disclosed if the defendant or counsel has been notified that privileged information has not been disclosed. If the charges against the defendant are dismissed prior to the time the above-mentioned documents are delivered or made accessible, the prosecuting attorney need not deliver or make accessible those documents unless otherwise so compelled by the court.

The court shall not dismiss a case because of the failure of the prosecuting attorney to immediately deliver copies of the reports or to make them accessible for inspection and copying.

SEC. 16. Section 866 of the Penal Code is amended to read:

866. (a) When the examination of witnesses on the part of the

people is closed, any ~~witnesses~~ witness the defendant may produce ~~must~~ shall be sworn and examined.

Upon the request of the prosecuting attorney, the magistrate shall require an offer of proof from the defense as to the testimony expected from the witness. The magistrate shall not permit the testimony of any defense witness unless the offer of proof discloses to the satisfaction of the magistrate, in his or her sound discretion, that the testimony of that witness, if believed, would be reasonably likely to establish an affirmative defense, negate an element of a crime charged, or impeach the testimony of a prosecution witness or the statement of a declarant testified to by a prosecution witness.

(b) It is the purpose of a preliminary examination to establish whether there exists probable cause to believe that the defendant has committed a felony. The examination shall not be used for purposes of discovery.

(c) This section shall not be construed to compel or authorize the taking of depositions of witnesses.

SEC. 17. Section 871.6 is added to the Penal Code, to read:

871.6. If in a felony case the magistrate sets the preliminary examination beyond the time specified in Section 859b, in violation of Section 859b, or continues the preliminary hearing without good cause and good cause is required by law for such a continuance, the people or the defendant may file a petition for writ of mandate or prohibition in the superior court seeking immediate appellate review of the ruling setting the hearing or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned. If the superior court grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to the court if this action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the rights of the parties to seek review in a court of appeal. When the superior court issues the writ and remittitur as provided in this section, the writ shall command the magistrate to proceed with the preliminary hearing without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The court of appeal may stay or recall the issuance of the writ and remittitur. The failure of the court of appeal to stay or recall the issuance of the writ and remittitur shall not deprive the parties of any right they would otherwise have to appellate review or extraordinary relief.

SEC. 18. Section 872 of the Penal Code is amended to read:

872. (a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty thereof, the magistrate ~~must~~ shall make or indorse on the complaint an order, signed by him or her, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A.B. is guilty thereof, I order that he or she be held to answer to the same."

(b) The finding of sufficient cause may be based in whole or in part upon hearsay evidence in the form of written statements of witnesses in lieu of testimony. At the time the defendant appears before the magistrate for arraignment, the prosecuting attorney may file with the court, and furnish a copy to the defendant, a statement made under penalty of perjury of the testimony of any witness which the prosecution wishes to introduce into evidence at the examination in lieu of the testimony of the witness. The statement shall be considered as evidence in the examination. This subdivision shall not apply if the witness is a victim of a crime against his or her person, or the testimony of the witness includes eyewitness identification of a defendant, or the prosecuting attorney has not filed with the court and furnished a copy to the defendant the statement of the testimony of the witness at the time of the arraignment or at least 10 court days prior to the date set for the preliminary hearing. For the purposes of this section an "eyewitness" is any person who sees the perpetrator during the commission of the crime charged; whether or not he or she can identify the perpetrator.

(c) Nothing in this section shall limit the right of the defendant to call any witness for examination at the preliminary hearing. If the witness called by the defendant is one whose statement of testimony was offered by the prosecuting attorney as provided in subdivision (b), the defendant shall have the right to cross/examine the witness as to all matters asserted in the statement. If the defendant makes reasonable efforts to secure the attendance of the witness but is unsuccessful in securing his or her attendance, the court shall grant a short continuance at the request of the defendant and shall require the prosecuting attorney to present the witness for cross/examination. If the prosecuting attorney fails to present the witness for cross/examination, the statement of the testimony of the witness shall not be considered as evidence in the examination.

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. Any law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training which includes training in the investigation and reporting of cases and testifying at preliminary hearings.

SEC. 19. Section 954.1 is added to the Penal Code, to read:

954.1. In cases in which two or more different offenses of the same class of crimes or offenses have been charged together in the same accusatory pleading, or where two or more accusatory pleadings charging offenses of the same class of crimes or offenses have been consolidated, evidence concerning one offense or offenses need not be admissible as to the other offense or offenses before the jointly charged offenses may be tried together before the same trier of fact.

SEC. 20. Section 987.05 is added to the Penal Code, to read:

987.05. In assigning defense counsel in felony cases, whether it is the public defender or private counsel, the court shall only assign counsel who represents, on the record, that he or she will be ready to proceed with the preliminary hearing or trial, as the case may be, within the time provisions prescribed in this code for preliminary hearings and trials, except in those unusual cases where the court finds that, due to the nature of the case, counsel cannot reasonably be expected to be ready within the prescribed period if he or she were to begin preparing the case forthwith and continue to make diligent and constant efforts to be ready. In the case where the time of preparation for preliminary hearing or trial is deemed greater than the statutory time, the court shall set a reasonable time period for preparation. In making this determination, the court shall not consider counsel's convenience, counsel's calendar conflicts, or counsel's other business. The court may allow counsel a reasonable time to become familiar with the case in order to determine whether he or she can be ready. In cases where counsel, after making representations that he or she will be ready for preliminary examination or trial, and without good cause is not ready on the date set, the court may relieve counsel from the case and may impose sanctions upon counsel, including, but not limited to, finding the assigned counsel in contempt of court, imposing a fine, or denying any public funds as compensation for counsel's services. Both the prosecuting attorney and defense counsel shall have a right to present evidence and argument as to a reasonable length of time for preparation and on any reasons why counsel could not be prepared in the set time.

SEC. 21. Section 1049.5 is added to the Penal Code, to read:

1049.5. In felony cases, the court shall set a date for trial which is within 60 days of the defendant's arraignment in the superior court unless, upon a showing of good cause as prescribed in Section 1050, the court lengthens the time. If the court, after a hearing as prescribed in Section 1050, finds that there is good cause to set the date for trial beyond the 60 days, it shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

SEC. 22. Section 1050.1 is added to the Penal Code, to read:

1050.1. In any case in which two or more defendants are jointly charged in the same complaint, indictment, or information, and the court or magistrate, for good cause shown, continues the arraignment, preliminary hearing, or trial of one or more defendants, the continuance shall, upon motion of the prosecuting attorney, constitute good cause to continue the remaining defendants' cases so as to maintain joinder. The court or magistrate shall not cause jointly charged cases to be severed due to the unavailability or unpreparedness of one or more defendants unless it appears to the court or magistrate that it will be impossible for all defendants to be available and prepared within a reasonable period of time.

SEC. 23. Chapter 10 (commencing with Section 1054) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 10. DISCOVERY

1054. This chapter shall be interpreted to give effect to all of the following purposes:

(a) To promote the ascertainment of truth in trials by requiring timely pretrial discovery.

(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

(c) To save court time in trial and avoid the necessity for frequent interruptions and postponements.

(d) To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.

(e) To provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.

1054.1. The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agency:

(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

(b) Statements of all defendants.

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.

(d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.

(e) Any exculpatory evidence.

(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

1054.2. No attorney may disclose or permit to be disclosed to a defendant the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1 unless specifically permitted to do so by the court after a hearing and a showing of good cause.

1054.3. The defendant and his or her attorney shall disclose to the prosecuting attorney:

(a) The names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any 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 defendant intends to offer in evidence at the trial.

(b) Any real evidence which the defendant intends to offer in evidence at the trial.

1054.4. Nothing in this chapter shall be construed as limiting any law enforcement or prosecuting agency from obtaining nontestimonial evidence to the extent permitted by law on the effective date of section.

1054.5. (a) No order requiring discovery shall be made in criminal cases except as provided in this chapter. This chapter shall be the only means by which the defendant may compel the disclosure or production of information 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 may have employed to assist them in performing their duties.

(b) Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 15 days the opposing counsel fails to provide the materials and information requested, the party may seek a court order. Upon a showing that a party has not complied with Section 1054.1 or 1054.3 and upon a showing that the moving party complied with the informal discovery procedure provided in this subdivision, a court may make any order necessary to enforce the provisions of this chapter, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure.

(c) The court may prohibit the testimony of a witness pursuant to subdivision (b) only if all other sanctions have been exhausted. The court shall not dismiss a charge pursuant to subdivision (b) unless required to do so by the Constitution of the United States.

1054.6. Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (c) of Section 2018 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.

1054.7. The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why disclosure should be denied, restricted, or deferred. If the material information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the

safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.

Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of such proceeding. If the court enters an order granting relief from a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the trial court may after trial and conviction, unseal any previously sealed matter.

SEC. 24. Section 1102.5 of the Penal Code is repealed.

1102.5. (a) Upon motion, the prosecution shall be entitled to obtain from the defendant or his or her counsel, all statements, oral or otherwise preserved, by any defense witness other than the defendant, after that witness has testified on direct examination at trial. At the request of the defendant or his or her counsel, the court shall review the statement in camera and limit discovery to those matters within the scope of the direct testimony of the witness. As used in this section, the statement of a witness includes factual summaries, but does not include the impressions, conclusions, opinions, or legal research or theories of the defendant, his or her counsel, or agent.

(b) The prosecution shall make available to the defendant, as soon as practicable, all evidence, including the names, addresses and statements of witnesses, which was obtained or prepared as a consequence of obtaining any discovery or information pursuant to this section.

(c) Nothing in this section shall be construed to deny either to the defendant or to the people information or discovery to which either is now entitled under existing law.

SEC. 25. Section 1102.7 of the Penal Code is repealed.

1102.7. Notwithstanding any other provision of law, the prosecution shall not be required to furnish to the defendant himself or herself, but only to his or her attorney, the address or telephone number of any victim or witness absent a showing of good cause as determined by the court, unless the defendant is acting as his or her own attorney. When an address or telephone number is released to the defendant's attorney, the court shall order the defendant's attorney not to disclose the information to the defendant.

If the defendant is acting as his or her own attorney in a case involving force or violence, dangerous or deadly weapons, or witness intimidation and where there is a possibility that the defendant poses a continuing threat to the victim or witness, the court shall protect the address and telephone number of the victim or witness by providing for contact only through a court/appointed licensed private investigator or by imposing other reasonable restrictions. When an address or telephone number is released to a court/appointed licensed private investigator, the court shall order the investigator not to disclose this information to the defendant.

SEC. 26. Section 1385.1 is added to the Penal Code, to read:

1385.1. Notwithstanding Section 1385 or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or

court as provided in Sections 190.1 to 190.5, inclusive.

SEC. 27. Section 1430 of the Penal Code is repealed.

1430. The prosecuting attorney shall deliver to, or make accessible for inspection and copying by, the defendant or counsel, copies of the police, arrest, and crime reports, upon the first court appearance of counsel, or upon a determination by a magistrate that the defendant can represent himself or herself. If unavailable to the prosecuting attorney at the time of that appearance or determination, the report shall be delivered within two calendar days. Portions of those reports containing privileged information need not be disclosed if the defendant or his or her counsel has been notified that privileged information has not been disclosed. If the charges against the defendant are dismissed prior to the time the above-mentioned documents are delivered or made accessible, the prosecuting attorney need not deliver or make accessible such documents unless otherwise so compelled by law. The court shall not dismiss a case because of the failure of the prosecuting attorney to immediately deliver copies of the reports or to make them accessible for inspection and copying.

SEC. 28. Section 1511 is added to the Penal Code, to read:

1511. If in a felony case the superior court sets the trial beyond the period of time specified in Section 1049.5, in violation of Section 1049.5, or continues the hearing of any matter without good cause, and good cause is required by law for such a continuance, either party may file a petition for writ of mandate or prohibition in the court of appeal seeking immediate appellate review of the ruling setting the trial or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned, including, but not limited to, cases that originated in the juvenile court. If the court of appeal grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to that court if such action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the right of the parties to file a petition for review in the Supreme Court. When the court of appeal issues the writ and remittitur as provided herein, the writ shall command the superior court to proceed with the criminal case without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The Supreme Court may stay or recall the issuance of the writ and remittitur. The Supreme Court's failure to stay or recall the issuance of the writ and remittitur shall not deprive the respondent or the real party in interest of its right to file a petition for review in the Supreme Court.

SEC. 29. If any provision of this measure or the application thereof to any person or circumstances is held invalid, that 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.

SEC. 30. The statutory provisions contained in this measure may 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.

Proposition 116: Text of Proposed Law

Continued from page 37

(f) The committee shall consider inclusion of sanitary holding tanks and reasonable passenger amenities including, but not limited to, accommodations for a reasonable number of bicycles carried on board by passengers, for both intercity and commuter applications.

(g) Intercity equipment specifications shall not be adopted unless approved by the National Railroad Passenger Corporation.

99604. If bonds sufficient to fund the total aggregate of the amounts specified in Chapter 3 (commencing with Section 99620) cannot be sold pursuant to Chapter 6 (commencing with Section 99690), the allocation for each project shall be reduced proportionately.

99605. Except as otherwise provided in this part, the Legislature may amend this part, by statute passed in each house of the Legislature by rollcall vote entered in the journal, four-fifths of the membership concurring, if the statute is consistent with, and furthers the purposes of, this part. No changes shall be made in the way in which funds are allocated pursuant to Chapter 3 (commencing with Section 99620), except pursuant to Section 99684.

CHAPTER 2. THE CLEAN AIR AND TRANSPORTATION IMPROVEMENT FUND

99610. The Clean Air and Transportation Improvement Fund is hereby created.

99611. It is the intent of the people of California, in enacting this

part, that bond funds shall not be used to displace existing sources of funds for rail and other forms of public transportation, including, but not limited to, funds that have been provided pursuant to Article XIX of the California Constitution, the Transportation Planning and Development Account in the State Transportation Fund, the Mills-Alquist-Deddeh Act (Chapter 4 (commencing with Section 99200) of Part 11), and local transportation sales taxes; that any future comprehensive transportation funding legislation shall not offset or reduce the amounts otherwise made available for transit purposes by this act; and that funding for public transit should be increased from existing sources including fuel taxes and sales tax on fuels.

99612. Notwithstanding Section 13340 of the Government Code, all money deposited in the fund is hereby continuously appropriated to the commission, without regard to fiscal years, for allocation for grants to itself, the department, the Department of Parks and Recreation, and to local agencies pursuant to Chapter 3 (commencing with Section 99620).

99613. (a) The commission shall allocate money from the fund in accordance with the allocations specified in Chapter 3 (commencing with Section 99620) to the department, to the Department of Parks and Recreation, and to local agencies as grants for expenditure for the preservation, acquisition, construction, or improvement of any of the following:

- (1) Rights-of-way for rail purposes.
- (2) Rail terminals and stations.
- (3) Rolling stock, including locomotives, passenger cars, and related rail equipment and facilities.

Exhibit B

Abstract of Judgment - Prison Commitment Indeterminate Sentence

ABSTRACT OF JUDGMENT - PRISON COMMITMENT INDETERMINATE SENTENCE

FORM CR 292

☒ SUPERIOR
☐ MUNICIPAL
☐ JUSTICE

COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

COURT (P.D.) 1, 9, 0, 1, 3 BRANCH OR JUDICIAL DISTRICT: SOUTH CENTRAL

PEOPLE OF THE STATE OF CALIFORNIA versus
DEFENDANT: COTTE, LAWRENCE LX PRESENT TAD4747B - A
AKA: ☐ NOT PRESENT - B
COMMITMENT TO STATE PRISON AMENDED ABSTRACT ☐ - C
ABSTRACT OF JUDGMENT - D
DATE OF JUDGMENT 02-26-98 (day) (mo) (year) JUDGE J. CHEROSKE CLERK P. TILLAGE

REPORTER _____ COUNSEL FOR PEOPLE _____ COUNSEL FOR DEFENDANT _____ PROBATION OR PROBATION OFFICER _____

FILED
LOS ANGELES SUPERIOR COURT
MAR 02 1998
000207
JOHN A. JARVIS, CLERK
F. TILLAGE, DEPUTY

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____ (NUMBER OF PAGES)

COUNT	CODE	SECTION NUMBER	CRIME	YEAR OF CONVICTION	DATE OF CONVICTION			CONVICTED BY	CONVICTED IN	CONVICTED TYPE	1st STR
					MO	DAY	YEAR				
1	PC	187(A) *	1ST DEG MURDER	96	01	13	98	X			

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series including WEAPONS, BATTERY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.): For each count list enhancements horizontally. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 12025. Add up time for enhancements on each line and enter total in right-hand column.

Count	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Total
1	12022.5(A)(1)	10									10

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER: List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior or term under § 667.5(a), list § 667.5(a) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 12025. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Total

4. Defendant was sentenced to State Prison for an indeterminate term:

A. ☒ For life without the possibility of parole on counts 01. C. ☐ For 15 years to life, with possibility of parole on counts _____.

B. ☐ For life with possibility of parole on counts _____. D. ☐ For 25 years to life, with possibility of parole on counts _____.
E. ☐ For other term prescribed by law on counts _____. (Specify term as separate sheet if necessary)

PLUS enhancement time shown above.

5. ☐ Indeterminate sentence shown on this abstract to be served ☐ consecutive to ☐ concurrent with any prior uncompleted sentence(s).

6. Other Cases: List all consecutive/unconcurrent sentence relationships. (None, etc. if not shown above)

TOTAL TERM LIFE PLUS 28 YEARS AND 8 MONTHS

(Use an additional page if necessary)

7. ☒ The Court reserved the defendant of all appeal rights in accordance with rule 4.0, California Rules of Court (AFTER TRIAL ONLY)

8. EXECUTION OF SENTENCE IMPOSED:

☒ AT ORIGINAL HEARING ☐ AT HEARING PURSUANT TO DECISION ON APPEAL ☐ AFTER REFUSAL OF PROBATION ☐ AFTER REFUSING PURSUANT TO DECISION OF COURTMENT PC § 12025 ☐ OTHER _____

9. DATE OF SENTENCE FULFILLED AND (P.D.) CREDIT FOR TIME SERVED IN CASE NO. 526 ACTUAL LOCAL TIME 458 LOCAL CREDIT CREDITS 68 STATE INSTITUTIONS ☐ BAY ☐ CDC

10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF TO BE DELIVERED:

☒ PERTHMAIN INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT: ☐ CALIF INSTITUTION FOR WOMEN-FRONTIER ☐ COAH-CHOMCHILLA ☒ CALIF INSTITUTIONS FOR MEN-CRIM ☐ OTHER MCC INST.

☐ AFTER 48 HOURS, EXCLUDING SUNDAYS, HOLIDAYS AND HOLIDAYS ☐ WASCO ☐ SAN GLENN ☐ R.A. JOHNSON

☐ OTHER (SPECIFY) _____

I hereby certify the foregoing to be a correct abstract of the judgment made on this date.

CLERK OF THE COURT

DEPUTY SIGNATURE P. TILLAGE DATE 03-02-98

This form is prescribed under Penal Code § 1712.3 to satisfy the requirements of § 1212.3 for indeterminate sentences. Attachments may be used but must be referred to in this document.

Form Approved by the Attorney General of California (Revised February 1, 1997)

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - INDETERMINATE
CR 292
DISTRIBUTION: PINK COPY-COURT FILE YELLOW COPY-DEPARTMENT OF CORRECTIONS

Pen. C. § 1712.3

000206
000305 FORM DSL 29C

JOHN A. DARKE, CLERK
F. Tullage
BY F. TULLAGE, DEPUTY

STANLEY C.

FORM DSL 290-A

LOS ANGELES SUPERIOR COURT

MAR 02 1998

JOHN A. WILKIE, CLERK
F. F. FILLAGE
BY F. FILLAGE, DEPUTY

LOS ANGELES

CDPAT LB.
190013

BRANCH

SOUTH CENTRAL

CASE NUMBER (S)

PEOPLE OF THE STATE OF CALIFORNIA versus

PRESENT

TAD47478

DEFENDANT: COTTLE, LAWRENCE

☐ NOT PRESENT

**COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT**

AMENDED ABSTRACT

DATE OF HEARING
(MO) (DAY) (YR)
2 26 98

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES FOR ALTERNATE FELONY SCHEMERS:

THIS IS ATTACHMENT PAGE NO

SEVENTH RELATION

IMPROVEMENTS TO SPECIFIC EQUITIES

3. EXEMPTIONS FROM AND FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS: - 14-01-1981

4 TOTAL TIME INCURRED CHARGES AT ADVERT PAGE.

78)

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PAZ 1745

1957年12月

24.07 - 2021

VI:JOW 574 - DEPARTMENT OF CORRECTIONS

WPA 72-204 - ADMINISTRATIVE OFFICE OF THE COURTS

Exhibit C

Inmate Board Actions

Inmate Board Actions

Inmate Name	COTTLE, LAWRENCE
CDCR Number	K87775
Parole Eligible Date (Month/Year)	11/2020

Pending Board Actions

Date	Action	Status
February 25, 2022	Parole Suitability Hearing	Tentative date for parole suitability hearing

Past Board Actions

Date	Action	Outcome
September 20, 2021	Review by Full Board	The board referred the matter for a new parole suitability hearing
June 10, 2021	Parole Suitability Hearing	Inmate was granted parole
April 23, 2018	Consultation	Inmate's consultation was conducted

Information current as of: 01/06/2022

[Print](#)[Close](#)

Exhibit D

Notice of Hearing to Laura Peterson

BOARD OF PAROLE HEARINGS

P.O. BOX 4036
SACRAMENTO, CA 95812-4036
(916) 445-4072

NOTICE OF HEARING
PURSUANT TO PENAL CODE SECTION 3043



November 10, 2021

LAURA PETERSON (VAN HAVERMAAT)
27122 CORDERO LN
MISSION VIEJO, CA 92691-6212

NAME: COTTLE, LAWRENCE
CDCR#: K87775
DATE AND TIME OF HEARING: February 25, 2022 at 1:30 PM
HEARING WILL BE HELD AT: IRONWOOD STATE PRISON
19005 WILEYS WELL ROAD
BLYTHE, CA 92226

A parole hearing will be held to determine whether the release of the inmate listed above will pose an unreasonable risk of danger to society. (*In re Lawrence* (2008) 44 Cal.4th 1181.) You have been identified as a victim, victim's next of kin, victim's family member, or a designated representative for this hearing. Under Penal Code Section 3043, victims, victim's next of kin, or members of the victim's family and two designated representatives, have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express their views concerning the inmate and the case.

In lieu of appearance and pursuant to Penal Code Section 3043.2, you may submit a written, audio, or video-recorded statement. A written transcript must be provided with an audio or video-recorded statement. Your statement must identify the inmate's name, CDCR number, and the date of the hearing. Your statement must be received by the Board as soon as possible to ensure it is provided to the hearing panel. The hearing panel will take your statement into consideration at the hearing. Statements can be submitted by e-mail to BPH.CorrespondenceUnit@cdcr.ca.gov, or by mail to Board of Parole Hearings, ATTN: Pre-Hearing Correspondence, P.O. Box 4036, Sacramento, CA 95812-4036.

If you wish to attend this hearing in person, or participate via audio or video conferencing (when available), please notify the Office of Victim and Survivor Rights & Services (OVSRS) by e-mail at victimservices@cdcr.ca.gov, or by telephone at 1-877-256-6877. Penal Code section 3043 requires victims' next of kin, victim family members, and victim representatives to notify the Board (by sending an email or calling OVSRS) at least 30 days prior to the hearing. If there are any changes to your address or contact information you must fill out a CDCR 1707 form and notify the OVSRS by mail at Office of Victim and Survivor Rights & Services, P.O. Box 942883, Sacramento, CA 94283-0001. This will ensure you are notified of future hearings.

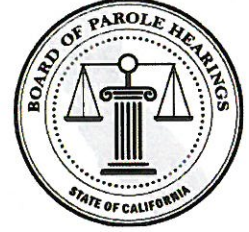
You may confirm the hearing is still scheduled by looking up the inmate on CDCR's website at <https://inmatelocator.cdcr.ca.gov/> and clicking on "View Board of Parole Hearings' Actions" at the bottom of the page. Please contact OVSRS for additional assistance and services. Additionally, you can contact the Board for any questions regarding the scheduled hearing at (916) 445-4072 or the Board's Scheduling Analysts via e-mail at BPHLiferAnalyst@cdcr.ca.gov.

For disability related accommodations, please contact the Board's Americans with Disabilities Act Coordinator at (916) 445-4072 at least 10 working days prior to the scheduled hearing.

BOARD OF PAROLE HEARINGS

P.O. BOX 4036
SACRAMENTO, CA 95812-4036
(916) 445-4072

NOTICE OF HEARING
PURSUANT TO PENAL CODE SECTION 3043

**Notice of Audio and Video Conferencing Terms and Conditions**

In order to attend a hearing via audio or video conferencing, participants must be advised of and agree to the following terms and conditions. (Please refer to Board of Parole Hearings Administrative Directive 2014-01 for more details.)

1. Waiver: If participants attend a hearing via audio or video conferencing, they waive their right to appear in person at the hearing. If participants request to attend a hearing via audio or video conferencing but change their mind and wish to attend in person, they must notify the Board as soon as possible via email at BPHLiferAnalyst@cdcr.ca.gov or by phone at (916) 324-0800.

2. Notification: Participants wishing to attend a hearing via audio conferencing must notify the Board via email at BPHLiferAnalyst@cdcr.ca.gov or by phone at (916) 324-0800 before the hearing. The Board or CDCR's Office of Victim and Survivor Rights and Services (OVSRS) will send a "Notice of Audio and Video Conferencing Terms and Conditions" (Terms and Conditions) to the participant.

Participants wishing to attend a hearing via video conferencing must coordinate with the prosecuting agency (or county Victim-Witness Assistance Program) before the hearing to determine if video conferencing equipment is available. The prosecuting agency is responsible for contacting the board via email at BPHLiferAnalyst@cdcr.ca.gov or by phone at (916) 324-0800 as soon as possible to request participation via video conferencing. The Board will coordinate with institutions to facilitate video conferencing. The Board or OVSRS will send the Terms and Conditions to the participants.

It is recommended that participants notify the Board of their intent to attend a hearing in person or via audio or video conferencing as early as possible so the Board can request the necessary institution gate clearances for those attending in person and make necessary arrangements for those attending via audio or video conferencing. In addition, the earlier the Board receives notice, the more likely the Board can accommodate the requests in the most convenient manner for all participants.

3. Equipment Availability: The availability of audio and video conferencing equipment varies by institution as does the working order of the equipment. Institutions may not be able to accommodate multiple participants, in which case participants may be required to gather in a central location, usually the office of the prosecuting agency or the county Victim-Witness Assistance Program.

Also, if a foreign language interpreting service is required for the hearing it will be given priority use of the audio or video equipment. Furthermore, operator-assisted conference calling services are generally cost prohibitive but may be authorized by the Executive Officer.

4. Participant Availability: Participants must be available at the scheduled start time of the hearing. Failure to do so will result in loss of the opportunity to participate in the hearing. Although hearings will not start before the scheduled time without permission from all the registered participants, they may begin as late as 6:00 p.m.

5. Participant Restrictions: Participants may not record or transmit by any means any portion of any hearing conducted by the Board, nor may participants allow an unauthorized individual to hear, view, record, or transmit any portion of a hearing.

6. Other Limitations: The Board's Executive Officer or the presiding commissioner may cancel, limit, or terminate participation by audio or video conferencing at any time for good cause. Examples of good cause include, but are not limited to, equipment or connectivity failure, the need to discuss confidential information (which may result in a suspension of signal transmission), and interruptions or other significant distractions caused by participants. If audio or video conferencing is terminated, the hearing will proceed without the participants.

In light of the above limitations, it is strongly advised that remote participants submit written statements to the Board prior to the hearing to ensure their views will be taken into consideration in the event of equipment failure, lack of connectivity or other limitation.

BOARD OF PAROLE HEARINGS

P.O. BOX 4036
SACRAMENTO, CA 95812-4036
(916) 445-4072

NOTICE OF HEARING
PURSUANT TO PENAL CODE SECTION 3043



7. Verbal Acknowledgment: At the commencement of each hearing, the panel shall determine if any participants are attending via audio or video conferencing and verbally review the Terms and Conditions with them. Each participant shall be asked to acknowledge all of the following in the affirmative in order to participate in the hearing:

- You have the right to attend this hearing in person. **Do you waive your right to personally appear at this hearing?**
- Your participation in this hearing via audio or video conferencing may be cancelled, limited, or terminated at any time for good cause, including equipment failure. **Do you understand that this hearing will proceed without your participation if the panel finds good cause to do so?**
- As a condition of your participation via audio or video conferencing you must agree not to record or transmit this hearing by any means, nor allow any unauthorized persons to hear, view, record or transmit any portion of this hearing. **Do you agree not to record or transmit this hearing, or allow others to hear, view, record or transmit any portion of this hearing?**

Exhibit E

Assembly Daily Journal

CALIFORNIA LEGISLATURE
2017-18 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Friday, September 15, 2017

ONE HUNDRED TWENTY-EIGHTH SESSION DAY

TWO HUNDRED EIGHTY-FIFTH CALENDAR DAY

AT SACRAMENTO, CALIFORNIA



NOTE: Official record of rollcall votes. All amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. All Senate amendments to Assembly measures considered by the Assembly on this day are on file with the Secretary of the Senate and available on request. A list of all measures amended and on which amendments were offered in the Assembly is shown on the final page of this day's Assembly Journal.

(Please direct any inquiries and report any omissions or errors to Minute Clerk: Phone 916-319-2360)

(Corrected 10-2-18)

**CALL OF THE ASSEMBLY DISPENSED WITH ON
SENATE BILL NO. 394**

At 5:02 p.m., on motion of Assembly Member Gonzalez Fletcher, and in the absence of any objection, further proceedings under the call of the Assembly were dispensed with.

Senate Bill No. 394 passed by the following vote:

AYES—44

Aguilar-Curry	Daly	Irwin	Quirk
Berman	Eggman	Jones-Sawyer	Reyes
Bloom	Frazier	Kalra	Ridley-Thomas
Bocanegra	Friedman	Levine	Rubio
Bonta	Garcia, C.	Limón	Santiago
Burke	Garcia, E.	Low	Stone
Calderon	Gipson	McCarty	Thurmond
Chau	Gloria	Medina	Ting
Chiu	Gonzalez Fletcher	Mullin	Weber
Chu	Grayson	Nazarian	Wood
Dababneh	Holden	O'Donnell	Mr. Speaker

NOES—30

Acosta	Chen	Gray	Patterson
Allen	Choi	Harper	Quirk-Silva
Arambula	Cooley	Kiley	Salas
Baker	Cunningham	Lackey	Steinorth
Bigelow	Dahle	Mathis	Voepel
Brough	Flora	Mayes	Waldron
Caballero	Fong	Melendez	
Cervantes	Gallagher	Obernolte	

Bill ordered transmitted to the Senate.

**CONSIDERATION OF DAILY FILE (RESUMED)
THIRD READING OF SENATE BILLS (RESUMED)**

SENATE BILL NO. 784 (Galgiani)—An act to amend Section 647 of the Penal Code, relating to crimes.

Bill presented by Assembly Member Dababneh.

Bill read third time, and passed by the following vote:

AYES—76

Acosta	Chu	Harper	Obernolte
Aguilar-Curry	Cooley	Holden	O'Donnell
Allen	Cooper	Irwin	Patterson
Arambula	Cunningham	Jones-Sawyer	Quirk-Silva
Baker	Dababneh	Kalra	Reyes
Berman	Dahle	Kiley	Ridley-Thomas
Bigelow	Daly	Lackey	Rodriguez
Bloom	Flora	Levine	Rubio
Bocanegra	Fong	Limón	Salas
Bonta	Frazier	Low	Santiago
Brough	Friedman	Maienschein	Steinorth
Burke	Gallagher	Mathis	Stone
Caballero	Garcia, C.	Mayes	Thurmond
Calderon	Garcia, E.	McCarty	Ting
Cervantes	Gipson	Medina	Voepel
Chau	Gloria	Melendez	Waldron
Chávez	Gonzalez Fletcher	Mullin	Weber
Chen	Gray	Muratsuchi	Wood
Chiu	Grayson	Nazarian	Mr. Speaker

NOES—None

Bill ordered transmitted to the Senate.