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# Proposition 57: Criminal Sentence. Parole. Juvenile Criminal Proceedings and Sentencing. "The Public Safety and Rehabilitation Act of 2016"

Navnit Bhandal

*University of the Pacific, McGeorge School of Law*

Tessa Nevarez

*University of the Pacific, McGeorge School of Law*

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**Proposition 57:**  
**Criminal Sentence. Parole. Juvenile Criminal Proceedings**  
**and Sentencing.**  
**“The Public Safety and Rehabilitation Act of 2016”**

Initiative Statute and Constitutional Amendment

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By

**Navnit Bhandal**

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2016*

*M.A., Education, University of California, Davis, 2011*

*B.A., History, University of California, San Diego, 2009*

&

**Tessa Nevarez**

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2016*

*B.A., Philosophy, California State University Long Beach, 2012*

## I. EXECUTIVE SUMMARY

Proposition 57, the Public Safety and Rehabilitation Act of 2016, is a constitutional amendment and statutory measure.<sup>1</sup> Under the California Constitution, it would authorize the California Department of Corrections and Rehabilitation (CDCR) to implement regulations allowing a state prisoner convicted of a nonviolent felony to be considered for parole after serving the full term of their primary offense.<sup>2</sup> The Act would further constitutionally provide the authority to the CDCR to award sentence credits for educational and behavioral achievements.<sup>3</sup> Additionally, under the Welfare and Institutions Code, the Act would transfer the authority to try juveniles as adults for specified offenses from prosecutors to judges.<sup>4</sup>

A YES vote on Proposition 57 means that certain state prison inmates convicted of nonviolent felonies will be eligible to be considered for early release, and that judges, instead of prosecutors, will decide whether to try a minor as an adult.

A NO vote on Proposition 57 will preserve current methods of parole consideration and a prosecutor's discretion to try a minor as an adult for most offenses.

## II. ROAD TO THE BALLOT

On December 22, 2015, Margaret Prinzing and Harry Berezin filed initiative text with the Attorney General. This was followed by a thirty-day public review period, which allows the public to propose changes to the initiative.<sup>5</sup> In January 2016, Governor Brown worked with Prinzing and Berezin to amend the initiative to include a constitutional amendment allowing for potential early parole of non-violent felons.<sup>6</sup> The original text submitted by Prinzing and Berezin only applied to juveniles. The Governor has spent over five million dollars in campaign contributions towards Proposition 57.<sup>7</sup> Governor Brown saw Proposition 57 as an opportunity to reduce the number of individuals in prison<sup>8</sup> and to get rid of the determinate prison term system he helped establish during his first term as governor.<sup>9</sup> The amendments to Proposition 57 were

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<sup>1</sup> CAL. SEC'Y OF STATE, *Text of Proposed Law, Proposition 57*, available at <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/text-proposed-laws.pdf> (on file with the *California Initiative Review*).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 142.

<sup>5</sup> *Laws Governing the Initiative Process*, BALLOTPEDIA, [https://ballotpedia.org/laws\\_governing\\_the\\_initiative\\_process\\_in\\_california#proposal\\_review.2fapproval](https://ballotpedia.org/laws_governing_the_initiative_process_in_california#proposal_review.2fapproval) (last visited Oct. 20, 2016) (on file with the *California Initiative Review*).

<sup>6</sup> OFFICE OF THE ATTORNEY GENERAL, *Prison Sentence Reform*, available at [https://oag.ca.gov/system/files/initiatives/pdfs/15-0121\\_\(prison\\_sentence\\_reform\)\\_1.pdf](https://oag.ca.gov/system/files/initiatives/pdfs/15-0121_(prison_sentence_reform)_1.pdf) (on file with the *California Initiative Review*).

<sup>7</sup> *Prop. 57 Would Fix a Mistake, Help Rehabilitate Felons*, THE SACRAMENTO BEE, Sept. 27, 2016, available at <http://www.sacbee.com/opinion/editorials/article104560476.html> (on file with the *California Initiative Review*).

<sup>8</sup> Marisa Lagos, *Brown Sees Proposition 57 As Key To Ending Court's Oversight of Prisons*, CAPITAL PUBLIC RADIO, Sept. 15, 2016, <http://www.caprдио.org/articles/2016/09/15/brown-sees-proposition-57-as-key-to-ending-courts-oversight-of-prisons/> (on file with the *California Initiative Review*).

<sup>9</sup> THE SACRAMENTO BEE, *Prop. 57 Would Fix a Mistake*, *supra* note 7.

approved by California's Attorney General. The California District Attorneys Association (CDA) filed a lawsuit against the petitioners of Proposition 57, arguing that the changes Governor Brown made to the proposition significantly changed the text of the initiative after it was filed with the Attorney General.<sup>10</sup>

The Sacramento County Superior Court ruled in favor of the plaintiffs, holding that the proponents of Proposition 57 were required to re-file the proposition before it could be placed on the ballot.<sup>11</sup> The defendants appealed and the California Supreme Court temporarily allowed the initiative to move to the signature gathering stage so that it would not be unnecessarily delayed until the 2018 election.<sup>12</sup> On June 6, 2016, the California Supreme Court ruled in favor of the defendants holding that the amendments to the initiative were reasonably germane to the original text. The majority opinion written by Justice Carol Corrigan stated, "The changes the proponents made to the initiative measure were in certain respects, quite extensive. However, that is their right, so long as the changes are reasonably germane to the original theme, purpose, or Subject."<sup>13</sup> As a result the decision by the Supreme Court of California, the proponents of Proposition 57 were allowed to move forward with the proposition.<sup>14</sup>

### III. THE LAW

#### A. Existing Law

##### 1. Prison Overcrowding: Background and Current Law

California is currently under a federal court order to reduce the population of inmates in state prisons.<sup>15</sup> Unlike previous attempts to address prison overcrowding, the constitutional amendment proposed by Proposition 57 does not aim to modify the sentencing process.<sup>16</sup> It primarily focuses on a prisoner's ability to be considered for early parole based on the nature of the offense as well as objective behavioral criteria.<sup>17</sup> When considering the merits of Proposition 57, it is useful to examine the history behind California's prison overcrowding problem and subsequent attempts to address the issue.

##### 2. Indeterminate Sentencing

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<sup>10</sup> Jim Miller, *Prosecutors' lawsuit challenges Jerry Brown's crime initiative*, THE SACRAMENTO BEE, February 12, 2016, available at <http://www.sacbee.com/news/politics-government/capitol-alert/article60053121.html> (on file with the California Initiative Review.)

<sup>11</sup> PROPOSITION 57, BALLOTPEDIA, [https://ballotpedia.org/California\\_Proposition\\_57,\\_Parole\\_for\\_Non-Violent\\_Criminals\\_and\\_Juvenile\\_Court\\_Trial\\_Requirements\\_\(2016\)](https://ballotpedia.org/California_Proposition_57,_Parole_for_Non-Violent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016)) (last visited Oct. 20, 2016) (on file with the California Initiative Review).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> ATTORNEY GENERAL OF CALIFORNIA, *Defendants' August 2016 Status Report in Response to February 10, 2014 Order*, available at <http://www.cdcr.ca.gov/News/docs/3JP-Aug-2016.pdf> (on file with the California Initiative Review).

<sup>16</sup> Cal. Proposition 57 (2016).

<sup>17</sup> *Id.*

Until the 1977, convicted felons were sentenced based on a number of factors, and judges retained discretion in the sentencing process. Ultimately, the length of the sentence was largely immaterial, as the Board of Parole Hearings maintained the discretion to determine whether an inmate was fit for release on parole.<sup>18</sup> This system of discretion allowed the state to stay within its means and control the population of state prisons.<sup>19</sup> However, critics of indeterminate sentencing found that the system produced inequitable results for minors and people from low-income backgrounds.<sup>20</sup> This prompted a national movement to a system of determinate sentencing.<sup>21</sup>

### 3. *Determinate sentencing and the Three Strikes Law*

Hoping to eliminate racial disparities in sentencing and parole, the legislature adopted the Determinate Sentencing law in 1977.<sup>22</sup> This law provided fixed minimum sentences for specified crimes and heightened sentences for aggregating factors. This was the beginning of a “tough on crime” movement that gradually led to harsher and harsher sentences in an effort to enhance public safety.<sup>23</sup>

Subsequently, voters approved the Three Strikes Law in 1994 under Proposition 184.<sup>24</sup> This law heightened sentencing requirements for each consecutive felony offense committed by the same person.<sup>25</sup> This provision, among other determinate sentencing provisions, has served to increase prison populations significantly over the last several decades. The state has since enacted several laws that have eroded the severity of the determinate sentencing process established by the Three Strikes Law, but it remains a cornerstone of criminal procedure and a main source of overpopulation in state prisons.<sup>26</sup>

### 4. *Brown v. Plata*<sup>27</sup>

*Brown v. Plata* was a decision by the United States Supreme Court to uphold a lower federal court order to reduce prison populations in California state prisons to avoid further

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<sup>18</sup> Philip E. Johnson, *California's Determinate Sentencing Statute: History and Issues*, BERKELEY LAW SCHOLARSHIP REPOSITORY, FACULTY SCHOLARSHIP at 16 (Oc. 7, 2016), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2883&context=facpubs> (on file with the *California Initiative Review*).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> CAL. PENAL CODE § 1170.

<sup>23</sup> Michael Vitiello, *Alternatives to Incarceration: Why Is California Lagging Behind?*, 28 GEORGIA ST. UNIV. L. J. 1275 (2012).

<sup>24</sup> Cal. Proposition 184 (1994).

<sup>25</sup> *Id.*

<sup>26</sup> See Cal. Proposition 36 (2012), and Cal. Proposition 47 (2014).

<sup>27</sup> *Brown v. Plata*, 563 U.S. 493, 507 (2011).

violation of the Eighth Amendment guarantee against cruel and unusual punishment.<sup>28</sup> For eleven years prior to this decision, California prisons operated at 200% of design capacity.<sup>29</sup> Prisoners were kept in close quarters, often falling ill with inadequate medical care.<sup>30</sup> One statistic found that a preventable death occurred in a California prison once every five to six days.<sup>31</sup> The court agreed that these conditions were attributable to the overpopulation of the prisons and upheld the order to significantly reduce the number of inmates per prison within a two-year timetable.<sup>32</sup> Despite numerous attempts to address the problem, prison overcrowding persists in excess of the population level allowed under *Brown v. Plata*.<sup>33</sup>

## **B. Attempts to Address the Problem**

### *1. Realignment*

In 2011, the legislature approved AB 109, which provides for realignment of certain inmates convicted of nonviolent offenses.<sup>34</sup> A limited amount of funding was provided to local governments to house these inmates in county jails and facilities instead of state prisons.<sup>35</sup> Governor Brown's 2012 Proposition 30 was a constitutional amendment that guaranteed continuous funding to local governments for the purpose of realignment.<sup>36</sup> While realignment has helped to solve the problem of overcrowding in state prisons, it has not reduced the total number of persons incarcerated in California.<sup>37</sup>

### *2. Proposition 36*

Proposition 36 (2012) revised the State's three-strikes law to permit resentencing for qualifying third-strike inmates whose third strike was not serious or violent.<sup>38</sup> As of August 10, 2016, approximately 2,216 third-strike inmates have been resentenced and released under Proposition 36.<sup>39</sup>

### *3. Proposition 47*

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> ATTORNEY GENERAL OF CALIFORNIA, Defendants' August 2016 Status Report in Response to February 10, 2014 Order, available at <http://www.cdcr.ca.gov/News/docs/3JP-Aug-2016.pdf> (on file with the *California Initiative Review*).

<sup>34</sup> AB 109, 2011 Leg., 2011–2012 Reg. Sess. (Cal. 2011).

<sup>35</sup> *Id.*

<sup>36</sup> Cal. Proposition 30 (2012).

<sup>37</sup> *Sensible Sentencing for a Safer California*, LITTLE HOOVER COMMISSION (2016), available at <http://www.lhc.ca.gov/studies/219/Report219.pdf> (on file with the *California Initiative Review*).

<sup>38</sup> Cal. Proposition 36 (2012).

<sup>39</sup> CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, (2016), available at <http://www.cdcr.ca.gov/News/docs/3JP-Aug-2016.pdf> (on file with the *California Initiative Review*).

On November 4, 2014, the voters passed Proposition 47, which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing.<sup>40</sup> As of July 31, 2016, approximately 4,635 inmates have been resentenced and released under Proposition 47.<sup>41</sup>

#### 4. *Credit Earning*

Section 3043 of Title 15 of the California Code of Regulations outlines the current procedures by which prisoners may qualify for early release based on credits earned through good behavior and time served.<sup>42</sup> Currently, there are limits on sentence credits for many prisoners.<sup>43</sup> For instance, certain offenders may only have their sentences reduced by fifteen percent through credits earned.<sup>44</sup>

#### 5. *Law in Other States*

In addition to California, many other states enacted “tough on crime” determinate sentencing measures in the 1980’s. Like California, these states also experienced a dramatic increase in prison overcrowding.<sup>45</sup>

While California has eroded away determinate sentencing laws with a patchwork of statutes and initiatives, other states have attempted comprehensive sentencing reform.<sup>46</sup> For example, Mississippi has reduced its corrections budget by 5% and reduced its recidivism rate by 30% since 2008 by implementing a range of solutions.<sup>47</sup> First, the state implemented rehabilitative and education sentence credits.<sup>48</sup> Second, they expanded their compassionate release program for elderly and terminally ill inmates.<sup>49</sup> Lastly, they replaced traditional incarceration in many instances with alternative efforts like house arrests and work-to-pay programs for nonviolent offenders.<sup>50</sup>

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<sup>40</sup> Cal. Proposition 47 (2014).

<sup>41</sup> Selena Farnesi & Emily Reynolds, *Proposition 47: The Safe Neighborhoods and Schools Act*, 12 CAL. INIT. REV. 99 (2014), available at <http://www.mcgeorge.edu/Documents/Publications/Proposition472014.pdf> (on file with the California Initiative Review).

<sup>42</sup> CAL. CODE REGS. tit. 15, § 3043.

<sup>43</sup> *Id.*

<sup>44</sup> LEGISLATIVE ANALYST'S OFFICE, *Proposition 57: Criminal Sentences. Juvenile Criminal Proceedings and Sentencing. Initiative Constitutional Amendment and Statute* (2016), available at <http://www.lao.ca.gov/ballot/2016/Prop57-110816.pdf> (on file with the California Initiative Review).

<sup>45</sup> Vitiello, *supra* note 23.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

North Carolina has enacted similar reforms.<sup>51</sup> Recognizing that traditional imprisonment is accompanied by a significant recidivism rate, the state has implemented programs to rehabilitate, and not just punish with conviction sentences.<sup>52</sup> North Carolina offers “Deferred Prosecution” for certain nonviolent offenders.<sup>53</sup> Under this policy, the offender is given time to perform restitution or provide community service to make amends in lieu of being prosecuted and sentenced to state prison.<sup>54</sup> Additionally, the state has implemented several “Residential Centers,” which operate as a hybrid of structured rehabilitation and supervised probation.<sup>55</sup> These measures have helped decrease prison populations and incarceration costs in the state.<sup>56</sup>

## C. Juvenile Criminal Procedure

### 1. Juvenile Court Policy and Procedure

Prior to 2000, the juvenile courts retained the discretion to charge youth offenders as juveniles or as adults.<sup>57</sup> Additionally, youth offenders received fitness hearing before they could be transferred to adult court, in order to guarantee a holistic consideration of his or her suitability for the juvenile court system.<sup>58</sup> The policy behind the juvenile court process was rooted in the concept that minors who commit crimes are still developing mentally and emotionally, and can benefit more from rehabilitative system as opposed to a punitive system.<sup>59</sup> This is in contrast to the adult system, which prioritizes punitive aspects of imprisonment. Research shows that youth offenders convicted in adult court and serving sentences among adult offenders in state prisons are more likely to commit another offense after they are released.<sup>60</sup>

Once it is determined that a minor is to be tried in a juvenile court, the sentences are lighter than in criminal court.<sup>61</sup> For example, a teen convicted of robbery with a firearm in juvenile court would face a minimum term of three years in the juvenile court system, while twelve years is the minimum sentence for the same offense committed by an adult.<sup>62</sup>

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<sup>51</sup> Sean Hayes, *The End Of Determinate Sentencing: How California’s Prison Problem Can Be Solved With Quick Fixes and A Long Term Commission*, STANFORD LAW, CALIFORNIA PRISON REFORM, at 18 (2006), available at [http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/266901/doc/slspublic/SHayes\\_06.pdf](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/266901/doc/slspublic/SHayes_06.pdf) (on file with the California Initiative Review).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Frankie Guzman, Laura Ridolfi, & Maureen Washburn, *The Prosecution of Youth as Adults: A County-Level Analysis of Prosecutorial Direct File in California and its Disparate Impact on Youth of Color*, YOUTHLAW.ORG (June 2016), available at <http://youthlaw.org/wp-content/uploads/2016/06/The-Prosecution-of-Youth-as-Adults.pdf> (on file with the California Initiative Review).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Jennifer Taylor, *California’s Proposition 21: A Case of Juvenile Injustice*, 75 UNIV. OF SOUTHERN CALIFORNIA L. J. 983, 988 (2001).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

Additionally, the court considers a number of factors in context with the crime committed, such as the child's family environment and performance in school.<sup>63</sup> Sentences can range from community service and probation to detention in a juvenile home, ranch, or camp.<sup>64</sup>

The juvenile court does not retain jurisdiction over an offender once the offender reaches the age of twenty-one in most cases or twenty-five in serious cases.<sup>65</sup> Once jurisdiction has been relinquished by juvenile court, a juvenile offender cannot be tried again for the same crime in a court of criminal jurisdiction if his or her sentence has been completed.<sup>66</sup>

## 2. Proposition 21

In 2000, Proposition 21, which increased penalties for various youth offenses, was passed in response to a growing nationwide concern about youth violence, prompted by events like the Columbine shooting.<sup>67</sup> The measure also took away discretion from the courts and transferred the authority to prosecutors to determine whether youth offenders should be tried in general criminal court or in juvenile court.<sup>68</sup>

Before Proposition 21, youth offenders were guaranteed a fitness hearing, where judges considered a multitude of factors before they could be tried as adults.<sup>69</sup> These factors included the individual's family life, potential for rehabilitation, and mental health.<sup>70</sup> Proposition 21 created the current system, which gives prosecutors three avenues by which they can charge a youth offender as an adult, two of which are direct file.<sup>71</sup> Under the first avenue, a mandatory direct file is required for serious and violent crimes, and the youth offender is not given a fitness hearing.<sup>72</sup> Under the second avenue, prosecutors can exercise discretion to file directly and deny a fitness hearing for serious crimes like robbery and assault with a firearm.<sup>73</sup> For less serious crimes, a youth offender is still given a fitness hearing, and the judge decides whether to retain jurisdiction in juvenile court.<sup>74</sup>

In 2003, just after Proposition 21 was passed, the percentage of youth offenders transferred to the adult system was 50% due to direct file by prosecutors and 50% due to a decision by judges after a fitness hearing.<sup>75</sup> The rate of transfers due to direct file has gradually but significantly increased over the years. In 2013, 84% of transfers was due to prosecutorial

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<sup>63</sup> M. Nieto, *County Probation Camps and Ranches for Juvenile Offenders*, CALIFORNIA RESEARCH BUREAU (2008), available at <http://www.library.ca.gov/crb/08/08-016.pdf> (on file with the *California Initiative Review*).

<sup>64</sup> CAL. WELF. & INST. CODE § 880.

<sup>65</sup> *Id.* at § 607.

<sup>66</sup> *Id.*

<sup>67</sup> Cal. Proposition 21 (2000).

<sup>68</sup> *Id.*

<sup>69</sup> Taylor, *supra* note 60.

<sup>70</sup> *Id.*

<sup>71</sup> Guzman, *supra* note 57.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

direct file.<sup>76</sup> This suggests that fewer youth offenders are being given fitness hearings to weigh their potential for rehabilitation in the juvenile court system.

#### **D. Proposed Law**

Proposition 57 is both a constitutional and a statutory amendment.<sup>77</sup> The measure has four main functions. First, Prop 57 allows prisoners convicted of nonviolent felonies to be eligible for parole consideration once they have completed the prison term for their primary offense.<sup>78</sup> Second, Proposition 57 grants the CDCR the authority to award prisoners with sentence credits for rehabilitation.<sup>79</sup> Third, Proposition 57 mandates the CDCR establish rehabilitation programs for inmates and to certify the programs enhance public safety.<sup>80</sup> Fourth, Proposition 57 amends the Welfare and Institution Code by giving judges in juvenile courts the authority to determine whether a juvenile aged fourteen or older should be prosecuted as an adult or a juvenile for his or her offense.<sup>81</sup>

##### *1. Constitutional Amendment*

Section 3 of Proposition 57 adds Section 32 to Article 1 of the California Constitution.<sup>82</sup> It provides that inmates convicted of nonviolent felonies may be eligible for parole consideration.<sup>83</sup> It also allows for the distribution of sentence credits by the CDCR for rehabilitative or educational achievements.<sup>84</sup> It is stated in the purpose of the initiative that these provisions are meant to reduce prison populations and enhance safety while saving money on incarceration costs.<sup>85</sup> The proposition outlines the desired objectives, but the CDCR is the state entity that will have the responsibility to implement specific standards to achieve the stated objectives.<sup>86</sup> The CDCR is mandated by the initiative to certify that these regulations protect and enhance public safety.<sup>87</sup> Additionally, the Board of Parole Hearings (BPH) will retain discretion as to whether an inmate is fit to return to society.

##### *2. Statutory Initiative*

Section 4 of Proposition 57 amends sections 602 and 707 of the Welfare and Institutions Code.<sup>88</sup> Under the statutory provisions of Proposition 57, prosecutors would no longer have the

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<sup>76</sup> *Id.*

<sup>77</sup> Cal. Proposition 57 (2016).

<sup>78</sup> *Id.* at § 3.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at § 4.

<sup>82</sup> *Id.* at § 3.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at § 2.

<sup>86</sup> *Id.* at § 3.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

authority to directly file charges against a minor in a court of general criminal jurisdiction.<sup>89</sup> Instead, juvenile courts would decide whether to try minors as adults, only if they commit serious or violent offenses, and only after a fitness hearing and comprehensive report.<sup>90</sup> No youth offender could be tried as an adult without consideration by the court of factors such as the minor's potential for rehabilitation, the degree of criminal sophistication exhibited, the minor's delinquent history, and the circumstances of the offense.<sup>91</sup>

#### **IV. DRAFTING ISSUES**

##### **A. "Nonviolent Felony Offense" is Not Defined by the Measure**

The Penal Code does not define "nonviolent felony offense." It merely enumerates a limited list of crimes that constitute a "violent felony offense."<sup>92</sup> Presumably then, every felony offense that is not enumerated under that list could be interpreted as a nonviolent felony offense, qualifying the prisoner for parole consideration under this measure.<sup>93</sup> This may include "serious" felonies that are not "violent" under Section 667.5 of the Penal Code.

However, the measure's guarantee in Section 3(b) that the CDCR's regulations will enhance public safety may mandate the CDCR to enumerate or limit the qualifying nonviolent offenses when implementing the required regulations.<sup>94</sup> This will help avoid releasing prisoners on parole who pose a danger to the community due to the nature of the offense committed.

##### **B. Safeguards to Unintentional Interpretations Due to Drafting Issues**

As a constitutional amendment, Proposition 57 is drafted broadly, leading to potential interpretation issues. However, the measure is designed with multiple safeguards in place to ensure that these issues may be resolved with implementation, in the interest of public safety.<sup>95</sup>

First, the CDCR is tasked with promulgating regulations that create specific standards to achieve the objectives stated under this measure. As a state agency, the CDCR is subject to the Administrative Procedure Act and the Office of Administrative Law's requirements for promulgating regulations.<sup>96</sup> Under these requirements, the public will have multiple opportunities to comment on any proposed standards and participate in hearings before the regulations are adopted. During this process, it is possible for the CDCR to refine the procedures for parole release in response to public input.

Additionally, even after the CDCR passes specific standards by which non-violent offenders may be considered for parole, the Board of Parole Hearings still maintains the

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<sup>89</sup> *Id.* at § 4, amending Cal. Welf. and Inst. Code 602.

<sup>90</sup> *Id.* at § 4, amending Cal. Welf. and Inst. Code 707.

<sup>91</sup> *Id.*

<sup>92</sup> CAL. PENAL CODE § 667.5.

<sup>93</sup> LEGISLATIVE ANALYST'S OFFICE, *supra* note 44.

<sup>94</sup> Cal. Proposition 57, § 3 (2016).

<sup>95</sup> *Id.*

<sup>96</sup> CAL. GOV'T CODE § 11346.

authority to deny any such petitions if it believes an inmate poses a danger to the community. Therefore, while the language of the measure is broad in its current form, there is room for refinement by state entities.

## V. CONSTITUTIONAL CONSIDERATIONS

### A. Single Subject Rule

According to the California Constitution, an initiative measure embracing more than one subject may not be submitted to the electors or have any effect.<sup>97</sup> All of its parts must be reasonably germane to each other, and to the general purpose or object of the initiative.<sup>98</sup>

Here, Proposition 57 addresses parole consideration for prisoners who have committed nonviolent felonies through an amendment to the California Constitution.<sup>99</sup> Additionally, the measure makes a statutory amendment to change the way minors are treated at the trial level.<sup>100</sup>

While these provisions will affect different areas of the law, proponents can successfully argue that the provisions are addressing the same general purpose, which is to reduce populations in state prisons.

## VI. PUBLIC POLICY CONSIDERATIONS

### A. Groups in Support

Over twenty organizations support Proposition 57. They include the California Labor Federation, the California State Law Enforcement Association, and Crime Survivors for Safety and Justice. The California Labor Federation supports Proposition 57 because it “will give judges, not prosecutors, the power to decide whether a juvenile offender should be tried as an adult. Judges are more neutral arbiters than prosecutors, who are typically more aggressive in pushing for convictions and maximum sentences”<sup>101</sup>. According to Elizabeth Calvin from Crime Survivors for Safety and Justice, a nonprofit group working to reform the criminal justice system without sacrificing public safety, “Virtually everyone who goes to prison will get out at some point. There are three ways they can return home: the same way they went in, worse off, or better”<sup>102</sup>. Thus, proponents of the measure feel it will lead to the rehabilitation of inmates, which will decrease recidivism.

### B. Proponent’s Main Arguments

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<sup>97</sup> CAL. CONST. art. II, § 8.

<sup>98</sup> *Sen. of State of Cal. v. Jones*, 988 P.2d 1089, 1098 (Cal. 1999).

<sup>99</sup> Cal. Proposition 57, § 3 (2016).

<sup>100</sup> *Id.* at § 4 (2016).

<sup>101</sup> Steven Pitts, *Vote YES On Prop 57 to Reform Our Broken Criminal Justice System*, CALIFORNIA LABOR FEDERATION, October 11, 2016, <http://calaborfed.org/vote-yes-on-prop-57-to-reform-our-broken-criminal-justice-system/> (on file with the *California Initiative Review*).

<sup>102</sup> Erica Webster, *California Legislature Hears Pros and Cons of Statewide Sentencing Reform*, CENTER ON JUVENILE AND CRIMINAL JUSTICE, July 6, 2016, <http://www.cjci.org/news/10555> (on file with the *California Initiative Review*).

## 1. Reduce Prison Overcrowding

Proponents contend Proposition 57 will reduce the number of individuals incarcerated in California prisons. California needs Proposition 57, because the number of inmates in California prisons has expanded by 500%.<sup>103</sup> This is due in part to measures enacted by voters in the 1990's, such as the three strikes law, which mandated incarceration and resulted in an increase in the prison population.<sup>104</sup>

Furthermore, proponents argue only a small portion of inmates are successfully rehabilitated under the current system. As a result, most prisoners committed other offenses after they were released.<sup>105</sup> According to proponents, Proposition 57 will address this by rehabilitating prisoners so they do not commit other offenses after release.<sup>106</sup> While Proposition 57 will make certain prisoners eligible for early parole, it is unclear how many prisoners will be granted early parole. Proposition 57 only makes prisoners eligible for early release.<sup>107</sup> However, it does not guarantee that prisoners will be released early. The parole board will make the ultimate decision<sup>108</sup>.

Additionally it is unclear what methods will be implemented to rehabilitate prisoners and how successful they will be. Proposition 57 grants the CDCR the responsibility with implementing programs that will rehabilitate inmates.<sup>109</sup> Currently inmates are able to earn sentencing credits that can be used towards early release, however, they are limited.<sup>110</sup>

## 2. Dangerous Offenders Will Remain in Prison

According to Governor Brown opponents wrongly argue that Proposition 57 will result in the release of dangerous offenders.<sup>111</sup> Proposition 57 only makes non-violent offenders as defined by the California Penal Code, eligible for early parole. The San Francisco Chronicle writes, "Simply allowing a certain class of offenders...the opportunity to be eligible for early release does not mean they are going to earn it."<sup>112</sup> Before being eligible for parole non-violent

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<sup>103</sup> *What is Proposition 57, YES ON 57*, <http://vote4prop57.com/about> (last visited Oct. 20, 2016) (on file with the *California Initiative Review*).

<sup>104</sup> Vitiello, *supra* note 23.

<sup>105</sup> *What is Proposition 57, YES ON 57*, <http://vote4prop57.com/about> (last visited Oct. 20, 2016) (on file with the *California Initiative Review*).

<sup>106</sup> *Id.*

<sup>107</sup> Cal. Proposition 57 (2016).

<sup>108</sup> *Id.*

<sup>109</sup> Cal. Proposition 57 (2016).

<sup>110</sup> CAL. CODE REGS. tit. 15, § 3043.

<sup>111</sup> *What is Proposition 57, YES ON 57*, <http://vote4prop57.com/about> (last visited Oct. 20, 2016) (on file with the *California Initiative Review*).

<sup>112</sup> *The Chronicle Recommends: Yes on Prop. 57*, THE SAN FRANCISCO CHRONICLE, Sept. 11, 2016, available at <http://www.sfchronicle.com/opinion/editorials/article/The-Chronicle-recommends-Yes-on-Prop-57-9215121.php> (on file with the *California Initiative Review*).

offenders must serve the full prison term for the primary offense.<sup>113</sup> Furthermore, prior to being granted parole inmates must prove they are not dangerous. Ultimately, the Board of Parole Hearings will determine which prisoners are eligible for release.<sup>114</sup> Thus, according to proponents dangerous prisoners will remain in prison and will not pose a danger to the public.

Individuals who commit serious felonies, as defined by the California Penal Code, will be eligible for early release under Proposition 57 if they follow prison rules, do not affiliate with gangs, do not use drugs, join education unions, or develop job skills.<sup>115</sup> The Sacramento Bee writes that individuals convicted serious felonies usually serve prison terms for two years.<sup>116</sup> According to the Legislative Analyst's Office [LAO], Proposition 57 will make inmates convicted of serious felonies eligible for release after serving a year and half of their sentence.<sup>117</sup> Therefore, according to proponents Proposition 57 will not drastically decrease the sentence terms served by inmates convicted of committing serious felonies.

### 3. *Taxpayers Will Save Money Without Sacrificing Public Safety*

In 2011, California spent over \$9.6 billion dollars towards incarcerating prisoners.<sup>118</sup> This is partly due to California's increasing prison population. California has the largest prison population in the country.<sup>119</sup> Proponents argue that proposition 57 will save taxpayers money because the state will be responsible for fewer prison costs.

In its fiscal analysis of the measure, the LAO led with the caveat that net cost savings will vary depending on how the provisions are implemented by the CDCR.<sup>120</sup> According to the LAO's analysis of recent patterns of the Board of Parole Hearings decisions, it is estimated that the state would save tens of millions of dollars annually.<sup>121</sup> Although, it is possible that there could be a moderate increased cost to the extent that the volume of parole hearings is increased.<sup>122</sup> Additionally, the cost to counties will likely increase if more adult and juvenile offenders are released on probation, due to a need for more officers.<sup>123</sup> The LAO also notes that the measure's rehabilitative aspects may reduce recidivism, saving an unknown amount of

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<sup>113</sup> Cal. Proposition 57 (2016).

<sup>114</sup> CAL. SEC'Y OF STATE, *Official Voter Information Guide: California General Election, Tuesday November 8, 2016*, at 104, available at <http://voterguide.sos.ca.gov/en/propositions/57/arguments-rebuttals.htm> (on file with the *California Initiative Review*) ["NOVEMBER 2016 VOTER GUIDE"].

<sup>115</sup> THE SACRAMENTO BEE, *Prop. 57 Would Fix a Mistake*, *supra* note 7.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Travis Waldron, *California Spends Six Times More On Prison Inmates Than On College Students*, THINKPROGRESS, Apr. 5, 2012, <https://thinkprogress.org/california-spends-six-times-more-on-prison-inmates-than-on-college-students-ca19867fd208#2vsgwxkcu> (on file with the *California Initiative Review*).

<sup>119</sup> Joan Petersilia, *Beyond The Prison Bubble*, 286 NATIONAL INSTITUTE OF JUSTICE at 26 (2011), available at <http://www.nij.gov/journals/268/pages/prison-bubble.aspx> (on file with the *California Initiative Review*).

<sup>120</sup> LEGISLATIVE ANALYST'S OFFICE, *supra* note 44.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

incarceration costs in the future.<sup>124</sup> While Proposition 57 has the potential to reduce spending, the proposition itself does not include any language related to decreasing taxes.

#### 4. *Will Provide Inmates with an Incentive For Rehabilitation*

The San Francisco Chronicle writes, “Even before it got on the ballot, Proposition 57 was the subject of rewrites, lawsuits, and public angst. So it’s all the more important for voters to see Proposition 57 clearly for what it is: a measure that will encourage themselves.”<sup>125</sup> Proponents argue that California’s prisons have numerous repeat offenders.<sup>126</sup> Proposition 57 will encourage rehabilitation by allowing inmates to acquire credits for steps they take towards rehabilitation, such as taking classes or for good behavior.<sup>127</sup> Proposition 57 also allows credits to be taken away for bad behavior. This is significant because inmates who are rehabilitated are less likely to commit repeat offenses. Research released by the Department of Justice in 2013 showed that inmates who participated in correctional education programs reduced their odds of returning to prison by 43%.<sup>128</sup>

Further, Governor Brown believes that prisoners will be more likely to seek programs to treat their mental health and substance abuse programs if they leave prison rehabilitated.<sup>129</sup> Thus, according to proponents of Proposition 57 Californians will be safer if inmates leave prison rehabilitated.

According to the National Institute of Justice, the policy of sentencing criminals to long prison terms is expensive and ineffective. Nearly half of released prisoners are incarcerated for new crimes within three years of being released.<sup>130</sup> A report conducted by California’s Expert Panel on Rehabilitation in 2007 found that fifty-percent of prisoners are released without participating in any type of rehabilitation program.<sup>131</sup> The National Institute of Justice predicts that if we “implement effective programs, we could reduce recidivism by fifteen to twenty percent.”<sup>132</sup>

The website [rightoncrime.com](http://rightoncrime.com) writes numerous states, including conservative states such as Texas and Georgia, are focusing on rehabilitating prisoners.<sup>133</sup> In 2007, the Texas Department

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<sup>124</sup> *Id.*

<sup>125</sup> THE SAN FRANCISCO CHRONICLE, *supra* note 112.

<sup>126</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 114.

<sup>127</sup> *Id.*

<sup>128</sup> Press Release, *Justice and Education Departments Announce New Research Showing Prison Education Reduces Recidivism, Saves Money, Improves Employment*, THE UNITED STATES DEPARTMENT OF JUSTICE, August 22, 2013, <https://www.justice.gov/opa/pr/justice-and-education-departments-announce-new-research-showing-prison-education-reduces> (on file with the *California Initiative Review*).

<sup>129</sup> Lagos, *supra* note 8.

<sup>130</sup> Petersilia, *supra* note 119.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> <http://rightoncrime.com/2011/05/texas-rehabilitation-programs-reduce-recidivism-rates/> (on file with the *California Initiative Review*).

of Criminal Justice released a report that found that the state had reduced their recidivism rate by 14% after requiring all prisoners to participate in some form of rehabilitation program.<sup>134</sup>

5. *The U.S. Supreme Court has ordered California to Reduce its Prison Population*

In 2011, the United States Supreme Court heard *Brown v. Plata*. The court held that California's prisons were unconstitutionally overcrowded. The federal government gave the state two years to reduce its prison population to 137.5% of capacity at maximum.<sup>135</sup> Supporters of the Proposition argue that if the state does not develop a solution for reducing prison overcrowding, California is at risk for a court ordered release.<sup>136</sup> This may result in the release of dangerous prisoners. Proposition 57 would address this by giving the state a way to reduce California's prison population without putting the public in danger.<sup>137</sup> According to Governor Brown, "Eighty percent of what Proposition 57 does is being done right now under the force of a court order."<sup>138</sup> If Proposition 57 is enacted it will allow California to comply with the court order from the United States Supreme Court.<sup>139</sup>

6. *Judges Should Have the Authority to Decide Whether Minors should be Tried as Adults*

In addition to making non-violent prisoners eligible for early parole, Proposition 57 will give judges in juvenile court the authority to determine whether a minor should be tried as an adult. If passed, Proposition 57 will overturn portions of Proposition 21 that gave District Attorney's the authority to determine whether juveniles should be tried as adults. According to the Center on Juvenile and Criminal Justice (hereafter referred to as CJCJ), "The data shows that prosecutors are increasingly charging youth in adult courts despite plummeting youth crime."<sup>140</sup> Proposition 57 is an attempt to address this problem.

According to the San Francisco Chronicle judges should have already had this power and minors who go through juvenile court are less likely to commit new crimes because of supervision.<sup>141</sup> Furthermore, youths charged as adults are more likely to suffer from abuse, violence, and suicide.<sup>142</sup>

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<sup>134</sup> *Id.*

<sup>135</sup> *Brown v. Plata*, 563 U.S. 493 (2011).

<sup>136</sup> YES ON 57, <http://vote4prop57.com/> (last visited Oct. 20, 2016) (on file with the *California Initiative Review*).

<sup>137</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 114.

<sup>138</sup> Lagos, *supra* note 8.

<sup>139</sup> *Brown v. Plata*, 563 U.S. 493, 507 (2011).

<sup>140</sup> Guzman, *supra* note 57.

<sup>141</sup> THE SAN FRANCISCO CHRONICLE, *supra* note 112.

<sup>142</sup> Guzman, *supra* note 57.

The CJ CJ argues the decision of whether a youth should be tried as an adult or a juvenile is an important one that should be made by judges after careful consideration.<sup>143</sup> They write that, “The decision to prosecute a youth in adult court has serious long-term negative consequences for young people and their families.”<sup>144</sup> Thus, the decision should rest with judges in the juvenile system. The CJ CJ further contends that the current system gives prosecutors too much power with little accountability. This is shown through a recent study that found prosecutors are charging youths as adults at an increasing rate despite there being a decrease in the number of youths who commit felonies.<sup>145</sup> Proponents, including the California Labor Federation, believe judges are better qualified to determine whether a juvenile should be tried as an adult or juvenile for his or her offense, because judges are neutral unlike prosecutors.<sup>146</sup>

### C. Groups in Opposition

Over 32 organizations oppose Proposition 57. Many of these are local officer associations. The organizations in opposition include the California District Attorneys Association (hereafter referred to as CDAA), Crime Victims United, and California Coalition of Law Enforcement Associations. In their analysis on Proposition 57 the CDAA writes Proposition 57 “would incorporate into the California Constitution drastic changes to our sentencing laws, including eligibility for parole that disregards enhancements such as use of a deadly weapon, commission of a crime to benefit a criminal street gang, or prior prison terms; disregards consecutive sentences for the commission of multiple offenses; and provides prison officials with broad authority to award increased conduct credits, including to murderers and rapists”.<sup>147</sup> Thus, opponents of Proposition 57 feel it makes drastic changes.

### D. Opponent's Main Arguments

#### 1. May Increase Crime

Opponents of Proposition 57 argue that Proposition 57 will increase crime because it will allow violent offenders to be released from prison early.<sup>148</sup> While, Proposition 57 will allow some prisoners to be eligible for early release, it is unclear whether it will lead to an increase in crime. Only prisoners convicted of nonviolent crimes and who have completed some form of rehabilitation program will be eligible for early release.

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Francesca Sands, *California Moves Closer to Eradicating Direct File*, CAMPAIGN FOR YOUTH JUSTICE, June 8, 2016, <http://www.campaignforyouthjustice.org/news/blog/item/california-moves-closer-to-eradicating-direct-file> (on file with the *California Initiative Review*).

<sup>146</sup> Pitts, *supra* note 101.

<sup>147</sup> LARRY D. MORSE II, ET AL. AD HOC COMMITTEE ANALYSIS OF THE PUBLIC SAFETY & REHABILITATION ACT OF 2016 (GOVERNOR’S INITIATIVE), Feb. 4, 2016, available at [http://rivcoda.org/opencms/resources/Brochures/2-19\\_CDAA\\_Ad\\_Hoc\\_Analysis\\_PSRA\\_2016\\_Revised\\_021016.pdf](http://rivcoda.org/opencms/resources/Brochures/2-19_CDAA_Ad_Hoc_Analysis_PSRA_2016_Revised_021016.pdf) (on file with the *California Initiative Review*).

<sup>148</sup> James Ardaiz, *Don’t Be Fooled by Deceptive Proposition 57*, THE FRESNO BEE, August 31, 2016, available at <http://www.fresnobee.com/opinion/readers-opinion/article98939357.html> (on file with the *California Initiative Review*).

Furthermore, the decision to release a prisoner will be made by a parole board. Prisoners will not be automatically released for completing a rehabilitation program. Therefore, there are safeguards in place to ensure Proposition 57 does not lead to an increase in crime.<sup>149</sup>

## *2. The Measure is Poorly Drafted*

Opponents further contend that the measure is poorly drafted and deceptive. Proposition 57 is deceptive because it relies on the penal code's definition for "violent" and "serious". The penal codes definitions for "violent" and "serious" are not consistent with how the public defines violent crimes. According to the Republican Party of California, Proposition 57 defines rape of an intoxicated person, assault with a deadly weapon, domestic violence, as non-violent crimes.<sup>150</sup> According to opponents this will result in violent prisoners being released from prison early.

## *3. Allows Career Criminals to be Treated the Same as First Time Offenders*

According to opponents, Proposition 57 will not take into account past convictions. Therefore, career criminals will be treated the same as first time offenders.<sup>151</sup> Proposition 57 will remove sentence enhancements, such as the three strikes law, for non-violent felonies. However, nothing in the language of Proposition 57 prevents the parole board from taking into consideration a criminal's past convictions. Further, sentence enhancements for violent felonies will not be impacted by Proposition 57.

## *4. Overturns Measures Enacted by Voters*

In 1994, California voters enacted three-strikes, which imposed mandatory life sentences on criminals convicted of committing three felonies. According to opponents of Proposition 57, this measure was enacted because it was important to voters. Opponents contend Proposition 57 would overturn California's three strikes law.<sup>152</sup>

While Proposition 57 will erode the three strikes law, it will not overturn it entirely. Proposition 57 will only apply to non-violent felonies.<sup>153</sup> Therefore, the three-strikes law will still apply to violent felonies. Furthermore, Proposition 57 reflects a national trend towards sentencing reform. Numerous states, including states that have been traditionally viewed as conservative such as Texas and Georgia, have enacted legislation to reduce the number of individuals incarcerated.<sup>154</sup>

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<sup>149</sup> *Infra* Part IV.

<sup>150</sup> *The Reality of Prop 57*, CA GOP, [https://www.cagop.org/vote\\_no\\_on\\_prop\\_57](https://www.cagop.org/vote_no_on_prop_57) (on file with the *California Initiative Review*).

<sup>151</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 114.

<sup>152</sup> MORSE, *supra* note 147.

<sup>153</sup> Cal. Proposition 57 (2016).

<sup>154</sup> *Texas Rehabilitation Programs Reduce Recidivism Rates*, RIGHT ON CRIME, May 16, 2011, <http://rightoncrime.com/2011/05/texas-rehabilitation-programs-reduce-recidivism-rates/> (on file with the *California Initiative Review*).

### 5. Amends the Constitution

Proposition 57 will amend the California Constitution. Opponents argue that it will be difficult to remove.<sup>155</sup> Legislators are unable to amend enacted initiatives through the normal legislative process. The California Constitution can be amended in two ways. The first way it can be amended is through the legislature.<sup>156</sup> This would require a two-thirds vote in the legislature followed by a vote of the majority of the electorate<sup>157</sup>.

The second way the California Constitution can be amended is through the initiative process.<sup>158</sup> It is difficult to amend the California Constitution, as it often requires large expenses for advertising and gathering signatures.

While, it is difficult to amend the California Constitution, citizens of California will still be able to repeal Proposition 57 if they are unhappy with it. They will be able to repeal by going through the initiative process again.

### 6. Prison Overcrowding Can be Addressed in Other Ways

Opponents contend that Proposition 57 will undermine recent legislation passed to put an end to violent crime such as sexual assault, domestic violence, and human trafficking. Thus, according to opponents, California should address prison overcrowding without undermining important legislation.<sup>159</sup> However, the opposition fails to provide alternative methods for addressing prison overcrowding and complying with the order from the United States Supreme Court.

## VII. CONCLUSION

Proposition 57 aims to reduce prison populations by allowing earlier parole consideration for inmates serving time for eligible non-violent offenses.<sup>160</sup> If passed, the CDCR will be required to promulgate regulations that will implement this measure.<sup>161</sup> Part of the CDCR's rulemaking process will require public input.

According to the Legislative Analyst's Office, Proposition 57 will likely result in the early release of many current state prisoners, as well as a net savings of tens of millions of dollars to the state.<sup>162</sup> Further, the initiative will allow for the CDCR to award sentence credits

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<sup>155</sup> NOVEMBER 2016 VOTER GUIDE, *supra* note 114.

<sup>156</sup> CAL. CONST. art. XVIII.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *The Reality of Prop 57*, CA GOP, [https://www.cagop.org/vote\\_no\\_on\\_prop\\_57](https://www.cagop.org/vote_no_on_prop_57) (on file with the *California Initiative Review*).

<sup>160</sup> Cal. Proposition 57 (2016).

<sup>161</sup> *Id.*

<sup>162</sup> LEGISLATIVE ANALYST'S OFFICE, *supra* note 44.

for rehabilitative and educational achievements.<sup>163</sup> This emphasis on rehabilitation may have a long-term effect of reducing the overall recidivism rate of California inmates, and save money in future incarceration costs.

Additionally, this initiative provides that prosecutors will no longer be able to directly file charges against a youth offender in a court of general criminal jurisdiction.<sup>164</sup> Most youth offenders with nonviolent crimes will be automatically considered fit for juvenile court.<sup>165</sup> Youth offenders charged with more serious or violent felonies will be entitled to a hearing and full consideration of numerous factors before a court may transfer them to the adult system.<sup>166</sup>

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<sup>163</sup> Cal. Proposition 57 (2016).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*