1992

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J. Clark Kelso
*Pacific McGeorge School of Law*

Brigitte A. Bass
*California District Attorneys Association*

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Recommended Citation

23 Pac. L.J. 1287

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Significant Cases Interpreting Proposition 8*

J. Clark Kelso** and Brigitte A. Bass***

BALLOT QUALIFICATION, CONSTITUTIONALITY AND RETROACTIVITY


The declared purpose of Proposition 8 is the deterrence of crime, and the only crimes it can deter are those committed after its adoption; thus, Proposition 8 applies only to prosecutions for crimes committed on or after its effective date.


Proposition 8 is ordered placed upon the June 1982 ballot.

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* The following provisions of Proposition 8 have not been interpreted by reported California decisions: California Penal Code sections 25(c) (evidence at sentencing) and 3043 (victims right to comment (adult prisons)); California Welfare and Institutions Code sections 6331 (abolition of provisions of Welfare and Institutions Code dealing with Mentally Disordered Sex Offenders), 1767 (victims right to comment (Youth Authority)) and 1732.5 (prohibition against adults in California Youth Authority).

The authors have undertaken a survey of current and former government officials deeply involved in the criminal justice system concerning Proposition 8's impact on case-law. The results of that survey will be published in an upcoming issue of Prosecutor's Brief, published by the California District Attorneys Association.

** Associate Professor of Law, University of the Pacific, McGeorge School of Law. I would like to acknowledge the help of my research assistants in the preparation of this compilation: Jennifer Anderson, Joan Medeiros and Jill Malat.

*** Director of Legal Publications, California District Attorneys Association. I want to thank my research assistant, Cathy Karnezis, for her assistance in the preparation of material for this compilation.

Proposition 8 is upheld against a number of constitutional attacks, including allegations that it: (1) Violates the single subject rule; (2) violates the proscription against using initiatives to accomplish constitutional revision; and (3) impairs an essential governmental function.

ARTICLE I, SECTION 28(A), CALIFORNIA CONSTITUTION
GENERAL DECLARATION OF PURPOSE
AND RIGHTS OF VICTIMS


Section 28(a) does not create a personal “right” or “interest” which would permit a victim to intervene in an ongoing criminal proceeding to contest a section 1170(d) hearing.


Relies upon the “broad reform” language in section 28(a) to support overturning cases which had created an exclusionary rule under the state constitution that was broader than required by the federal constitution.

The defendant cannot be ordered to pay restitution to an entity that had an independent obligation to pay for the treatment of the victim's injuries incurred as a result of the assault. Only the direct and actual victims of an assault are within the restitutionary condition of probation authorized by Health and Safety Code section 1203.1g.


For an order of restitution as a condition of probation to satisfy the requirements of due process, the defendant must have an opportunity to present evidence on the defendant's ability to pay.


Restitution for crime victims is now a California state constitutional right.


Because section 28(b) directs the Legislature to adopt implementing legislation, and because that constitutional provision does not so completely define the nature of the right it newly confers, nor the means of enforcing that right so as to render the directive to the Legislature insignificant, section 28(b) is not a self-executing provision.
CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 28(C)
RIGHT TO SAFE SCHOOLS

The safe schools provision of Proposition 8 does not impose an express affirmative duty on any government agency to guarantee the safety of schools. Although the right proclaimed in section 28(c) is inalienable and mandatory, it is not self executing in the sense that 28(c) does not provide an independent basis for a private right of action. The means by which the right is to be achieved has been left to the Legislature.

The safe schools provision is not self-executing and does not create a damage remedy for its violation.

Recognizing students’ right to safe schools as a factor in evaluating a fourth amendment challenge to the detention of a high school student.

In enacting Penal Code section 627 the Legislature was implementing the provisions of Proposition 8; thus, section 627 was not to be given retroactive effect.

Recognizing that students have a constitutional right to protection from crime and that students are entitled to safe schools.

1290

The right to safe schools provision of the Victims' Bill of Rights did not create an exception to the exclusive remedy provisions of the Workers' Compensation Laws.

CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 28(d)
ADMISSIBILITY OF ALL RELEVANT EVIDENCE


Vehicle Code section 40803(a) (rendering evidence derived from a speed trap inadmissible) was abrogated by Proposition 8.


People v. Harris, 47 Cal. 3d 1047, 767 P.2d 619, 255 Cal. Rptr. 352 (1989), held that section 28(d) has abrogated the general rule of inadmissibility, i.e. Evidence Code section 787; therefore, the specific exception to the general rule, i.e., Evidence Code section 788, cannot remain in a vacuum and must also have been abrogated by section 28(d). Thus, relevant evidence may include misdemeanor convictions which satisfy the moral turpitude test of People v. Castro, 38 Cal. 3d 301, 696 P.2d 111, 211 Cal. Rptr. 719 (1985).

Because the offenses charged in this case occurred after the addition of section 28(d) to the state constitution, the voluntariness of the defendant’s Miranda waiver and subsequent confession must be established by a preponderance of the evidence as required by People v. Markham, 49 Cal. 3d 63, 775 P.2d 1042, 260 Cal. Rptr. 273 (1989).


In analyzing whether an encounter is a detention, the federal standard, analyzing the objective facts of the incident, is the appropriate standard. After the adoption of Proposition 8, the subjective belief of the citizen analysis, as set out in In re Tony C., 21 Cal. 3d 888, 582 P.2d 957, 148 Cal. Rptr. 355 (1978), no longer applies.


Proposition 8 abrogates the judicially declared rule of criminal procedure contained within People v. Aranda, 63 Cal.2d 518, 407 P.2d 265, 47 Cal. Rptr. 353 (1965), to the extent it requires the exclusion of evidence which would not be excluded by the federal constitution.
1992 / Significant Cases Interpreting Proposition 8

People v. Luttenberger, 50 Cal. 3d 1, 7, 784 P.2d 633, 635, 265 Cal. Rptr. 690, 693 (1990).

Section 28(d) itself does not limit a defendant’s discovery rights under People v. Rivas, 170 Cal. App. 3d 312, 216 Cal. Rptr. 477 (1985) (holding that a criminal defendant is entitled to discovery of police records and other documents concerning the background of a confidential informant on whose information a search warrant was issued, provided the documents were first screened by the court in camera to protect the informant’s confidentiality).


Although Proposition 8 was enacted after the crimes were committed, and thus was not applicable to the case, section 28(d) would compel the finding that California v. Trombetta, 467 U.S. 479 (1984), supersedes People v. Hitch, 12 Cal. 3d 641, 527 P.2d 361, 117 Cal. Rptr. 9 (1974).


The adoption of Proposition 8 had no affect on Evidence Code section 352.


People v. Superior Court (Hawkins), 6 Cal. 3d 757, 493 P.2d 1145, 100 Cal. Rptr. 281 (1972), is abrogated by Proposition 8.
The rule of People v. Superior Court (Hawkins), 6 Cal. 3d 757, 493 P.2d 1145, 100 Cal. Rptr. 281 (1972) (the taking of a person's blood is valid only if the taking is done in a medically approved manner, is incident to a lawful arrest, and is based upon the reasonable belief that the person is intoxicated) has been abrogated by Proposition 8 because its holding is contrary to federal constitutional standards.

Section 28(d) effected a pro tanto repeal of California Evidence Code section 790, and there is no basis on which to distinguish section 790 from sections 786 and 787.

Section 28(d) abrogated the rule in People v. Jimenez, 21 Cal. 3d 595, 580 P.2d 672, 147 Cal. Rptr. 172 (1978) (requiring proof of the voluntariness of a confession beyond a reasonable doubt). Voluntariness may now be proven by a preponderance of the evidence.

People v. Stoll, 49 Cal. 3d 1136, 1152 n.16, 783 P.2d 698, 707 n.16, 265 Cal. Rptr. 111, 120 n.16 (1989).
Suggesting that section 28(d) does not affect the admissibility of professional/expert testimony pursuant to the Kelly/Frye rule or California Evidence Code sections 210, 801, and 1102. The parties and the lower courts have assumed that these prior rules remain intact in the wake of section 28(d).
Article 1, section 28(d) clearly reflects a policy that comments which invite the jury to draw a logical inference based on the state of the evidence, including comment on the failure of the defendant to call available witnesses, are permissible except as limited by California Evidence Code section 913 and *Griffin v. California*, 380 U.S. 609 (1965).

The enactment of section 28(d) repealed the exclusionary rule set forth in *People v. Disbrow*, 16 Cal. 3d 101, 545 P.2d 272, 127 Cal. Rptr. 360 (1976) (barring the use of statements to the police if they were obtained in violation of the accused's *Miranda* rights). In adopting section 28(d) and its exception to the statutory rules of evidence, the voters intended to preserve only legislatively created evidentiary rules, while abrogating judicial decisions which had required the exclusion of evidence solely on state constitutional grounds.

The unqualified holding in *People v. Belleci*, 24 Cal. 3d 879, 598 P.2d 473, 157 Cal. Rptr. 503 (1979) (evidence suppressed pursuant to Penal Code section 1538.5 is inadmissible at any trial or hearing), must be modified to include the qualification that evidence is inadmissible only if exclusion is mandated by the federal constitution.

The defendant's right to discovery under California law is not contravened by Proposition 8.

For crimes committed after the enactment of Proposition 8, the standard for the admissibility of statements given to the police by a suspect who previously invoked his right to remain silent is that of federal constitutional law under Michigan v. Mosley, 423 U.S. 96 (1975). Proposition 8 effectively abrogated the rule in People v. Pettingill, 21 Cal. 3d 231, 578 P.2d 108, 145 Cal. Rptr. 861 (1978).


Because the rule of People v. Houston, 42 Cal. 3d 595, 724 P.2d 1166, 230 Cal. Rptr. 141 (1986) (excluding statements given by suspects unaware that their attorney had come to the police station seeking to confer with them), is a judicially fashioned exclusionary rule premised on neither statutory authority nor federal constitutional compulsion, it has been repealed by section 28(d).


Section 28(d) did not modify the law which permitted a defendant to exclude another’s coerced confession and evidence gathered as a result of that confession.


The validity of Evidence Code section 1101, which determines the admissibility of uncharged criminal offenses, is unimpaired by section 28(d) because it was subsequently reenacted and made enforceable by a two-thirds vote of the Legislature.
Significant Cases Interpreting Proposition 8

   Notwithstanding section 28(d), both testimony given by a minor at a fitness hearing and statements made to a probation officer are subject to use immunity and may not be used at a subsequent trial for a criminal offense.

   Proposition 8 eliminates the judicially created vicarious exclusionary rule for violations of the search and seizure provisions contained within the state constitution.

   People v. Coleman, 13 Cal. 3d 867, 533 P.2d 1024, 120 Cal. Rptr. 384 (1975) (excluding probation revocation hearing testimony during a subsequent trial on the underlying criminal charge) and its limited exclusionary remedy have survived the adoption of Proposition 8.

   Section 28(d) abolished the state’s judicially created vicarious exclusionary rule.

   Section 28(d) does not repeal Penal Code section 1112, which prohibits a trial court from ordering the victim in a sexual assault prosecution to submit to a psychiatric or psychological examination for the purpose of assessing his or her credibility.

People v. Disbrow, 16 Cal. 3d 101, 545 P.2d 272, 127 Cal. Rptr. 360 (1976) is predicated on article I, section 15 of the state constitution, and has not been rendered a nullity by enactment section 28(d). In fact Disbrow remains a statutory exemption to the provisions of section 28(d).


The rule from People v. Barrick, 33 Cal. 3d 115, 654 P.2d 1243, 187 Cal. Rptr. 716 (1982) (the "sanitization" of similar felony convictions for impeachment purposes is improper because of the inherent danger of jury speculation), does not survive Proposition 8; instead the factor analysis from People v. Beagle, 6 Cal. 3d 441, 492 P.2d 1, 99 Cal. Rptr. 313 (1972) is appropriate.


Section 28(d) abrogated California’s vicarious exclusionary rule.
CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 28(E)
PUBLIC SAFETY BAIL


The fact that the district attorney’s office is not given notice and an opportunity to participate in decisions to grant own-recognizance releases prior to court appearances does not violate the “Public Safety Bail” provisions of section 28(e). Prior release notice to the prosecuting attorney is required only where the detainee is accused of committing a violent felony.

CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 28(F)
USE OF PRIOR CONVICTIONS FOR IMPEACHMENT


Prospectively adopting the rule in Luce v. United States, 469 U.S. 38 (1984), that the denial of a motion to exclude a prior conviction offered for impeachment is not reviewable on appeal if the defendant fails to testify.


Section 28(f) authorizes the impeachment of a witness in a criminal trial by a prior felony conviction that necessarily involves moral turpitude. However, the trial court retains its discretionary power under Evidence Code section 352 to exclude any prior felony conviction when its probative value is substantially outweighed by the risk of undue prejudice.
People v. Phillips, 41 Cal. 3d 29, 54 n.8, 711 P.2d 423, 437 n.8, 222 Cal. Rptr. 127, 142 n.8 (1985).
Section 28(f) cannot be retroactively applied to the prosecution of crimes committed before its effective date.

The “proof in open court” provision of Proposition 8 overrules People v. Hall, 28 Cal. 3d 143, 616 P.2d 826, 167 Cal. Rptr. 844 (1980), to the extent Hall precludes disclosure of stipulated ex-felon status to a jury trying a charge as to which this status is an element. On the other hand, Proposition 8 does not require the nature of the prior conviction to go to the jury in such a case, since that information is utterly irrelevant to the charge. Thus, disclosure of the nature of the prior conviction remains error in post-Proposition 8 trials.

Section 28(f), by its terms, precludes the use of a juvenile adjudication for impeachment. Juvenile adjudication is a civil proceeding; the fact that due process requires proof beyond a reasonable doubt, and that criminal rules of evidence be utilized, does not render the adjudication a criminal proceeding. A juvenile’s delinquency may consist of felony activity, but a juvenile adjudication of felonious activity is not a felony conviction.
CALIFORNIA CONSTITUTION, ARTICLE I, SECTIONS 28(F)-(G) AND PENAL CODE, SECTION 667(A)
USE OF PRIOR CONVICTIONS FOR PUNISHMENT ENHANCEMENT

Concluding that People v. Vega, 224 Cal. App. 3d 506, 273 Cal. Rptr. 684 (1990) (which held that a Penal Code section 12022.1 "on bail" enhancement must be imposed without the double-the-base-term limitation of Penal Code section 1170.1(g)), was incorrectly decided, and that the trial court erred in imposing a sentence which disregarded the double-base-term limitation of section 1170.1(g).

If section 28(f) is read to require that a prior conviction, underlying a prior-murder special-circumstances allegation, be proven to the trier of fact in court, the court will similarly determine that provision as requiring only that the fact or truth of the prior conviction be determined by the trier of fact.

The enactment of section 28(f) (prior felony convictions to be used without limitation for enhancement purposes), was an unambiguous expression of the electorate's intent to supersede the twice-the-base-term limitation as it applied to prior-felony-conviction enhancements. Further, the broad mandate of Section 28(f), concerning the use of any prior felony conviction for enhancement purposes, necessarily includes the lesser category of enhancements based on prior felony convictions for which imprisonment was imposed,
and thus applies to the enhancements created by Penal Code section 667.5(b).


It was sufficient evidence to prove the defendant’s admission of a prior felony when the prosecution produced a felony complaint charging second degree burglary of a residence, a commitment order holding defendant to answer for burglary, an information alleging residential burglary, an abstract of judgment reflecting a 16-month jail sentence, a transcript of the defendant’s plea of guilty, and the minute orders.


The trial court may look to the information and the abstract of judgment when determining whether a prior conviction was a serious felony.


The trial court may review the transcript of the preliminary hearing for the prior conviction, as part of the entire record of conviction, in order to determine whether the prior conviction is a “serious felony.”


In imposing an enhanced sentence, the trial court’s reliance on a triple hearsay statement located in a probation report, regarding the defendant’s use of a dangerous weapon, was error.
1992 / Significant Cases Interpreting Proposition 8

When the defendant failed to stipulate to a prior conviction, court could admit evidence of both prior conviction and its nature.

The trial court properly enhanced the defendant’s sentence for two prior convictions for residential burglary, even though they were adjudicated in one proceeding.

"On bail" sentence enhancements under Penal Code section 12022.1 are imposed for prior felony convictions, and pursuant to Proposition 8, section 28(f), must be imposed without limitation to the double-the-base-term limitation of Penal Code section 1170.1(g).

In light of both People v. Prather, 50 Cal. 3d 428, 787 P.2d 1012, 267 Cal. Rptr. 605 (1990) (directing that section 28(f) be given a liberal and common sense interpretation), and the fact that the legislative intent underlying Penal Code section 12022.1 precisely comports with the underlying purpose of section 28(f), the Penal Code section 12022.1 "on bail" enhancements are, in essence, "prior felony conviction" enhancements as that latter phrase is interpreted and defined under section 28(f).

Trial court may not enhance the defendant's sentence when the record of a prior conviction does not establish the necessary elements of the serious felony, but merely refers to the included offense of the crime charged. The Prosecution may, without subjecting the defendant to double jeopardy, prove on remand that the prior convictions were serious felonies.


The trial court may refer to statements made by the defendant in probation report for purposes of determining whether the prior convictions were serious felonies. For purposes of sentence enhancement, the terms "residence" and "inhabited dwelling house" are equivalent, and cannot be differentiated for first degree burglary.


The trial court erred in enhancing the defendant's sentence for a prior conviction in another state when it could not be determined whether that offense constituted a felony in California.


The phrase "on charges brought and tried separately" in section 667 requires that the charges underlying the prior "serious felony" convictions must have been made in proceedings that were formally distinct.
Noting that People v. Hall, 28 Cal. 3d 143, 616 P.2d 826, 167 Cal. Rptr. 844 (1980), had been abrogated by section 28(f).

The statutory context of Proposition 8 provides the only clear, direct, and compelling evidence of the intended scope of section 1732.5. When read in conjunction with Penal Code section 667, the reference in section 1732.5 to persons "convicted" of serious felonies must be construed to refer exclusively to persons who currently stand convicted of serious felonies.

The enactment of Proposition 8 did not eliminate the trial court's power, under Penal Code section 1385, to strike the enhancement provisions in Penal Code section 667.

Proposition 8 did not intend to define a crime intermediate between first and second degree burglary, "burglary of a residence." Instead, it creates a new enhancement under which persons convicted of first or second degree burglary could receive an additional sentence. Additionally, enhancements for serious felonies under Penal Code section 667 were not intended to be subject to the double-base-term limitation of section 1170.1(g).
Neither Penal Code section 667 nor California Constitution article I, section 28(f) can be construed to abrogate a trial court's well-established statutory authority to strike a prior conviction.

The double-the-base term limitation of Penal Code section 1170.1(g) was not eliminated by section 28(f). However, a court retains the discretion to strike or stay the imposition of a sentence under Penal Code section 667(a).


Unless the sentencing court states its reasons for striking the enhancement by finding mitigating circumstances, it is required to impose a Penal Code section 667.5 enhancement if the allegation of prior conviction is found true.
Section 666 of the Penal Code is a sentence-enhancing statute and not a substantive offense statute; therefore, a defendant charged under section 666 is on notice that if an allegation of prior incarceration and/or conviction is found true, the defendant faces an enhanced sentence.

People v. Rhoads, 221 Cal. App. 3d 56, 61, 270 Cal. Rptr. 266, 269 (1990)
“Conviction” means ascertainment of guilt by plea or verdict, there is no distinction of legal significance between the two despite the fact that the plea may be withdrawn.


A trial court may not enhance a defendant’s sentence for two prior convictions when the two prior convictions were filed in a single complaint.

A trial court lacks discretion under Penal Code section 667 to order terms to be served concurrently rather than consecutively.

For sentence enhancement purposes, a trial court may look not only to the charging information for the prior conviction, but also to a minute order in which the defendant had plead no contest to a burglary.


The trial court may look to the allegations in the information charging second degree burglary even though the residential nature of the burglary was not part of the prior conviction.


The trier of fact may look to the entire record of a prior conviction for purposes of sentence enhancements: People v. Alfaro, 42 Cal. 3d 627, 724 P.2d 1154, 230 Cal. Rptr. 129 (1986), is overruled.

People v. Colbert, 198 Cal. App. 3d 924, 930, 244 Cal. Rptr. 98, 102 (1988).

For purposes of sentence enhancement a trier of fact may look to the accusatory pleadings and relevant court documents to determine the truth of a prior-conviction allegation.


The trial court may look at official court files to determine whether a prior conviction of second degree burglary, to which the defendant has plead nolo contendere, was a serious felony for purposes of sentence enhancement.
1992 / Significant Cases Interpreting Proposition 8

The trial court may use the defendant’s change of plea form in order to go behind the record of a prior conviction.

The trial court may consider facts on the record of a prior conviction, even if those facts were not essential to that conviction.

A defendant probationer who has never served prison time may have his sentence enhanced under Penal Code section 667.

A defendant cannot admit to a prior conviction for a serious offense in another jurisdiction when it lacks all of the elements of that felony under California law.

A defendant cannot claim an erroneous use of Penal Code section 1192.7 (limitation on plea bargains) to attack his own conviction on the grounds that it violated section 1192.7.

A defendant has no standing to allege a violation of Penal Code section 1192.7 unless the defendant meets one of the three exceptions listed under section 1192.7

For purposes of sentence enhancement, the defendant’s admission to four previous serious felony convictions was sufficient, even though the defendant did not admit specifically to residential burglaries.


The trial court did not err in concluding that the defendant’s prior conviction for assault with a deadly weapon constituted a “serious felony” for purposes of a five year sentence enhancement. The people may not go behind an adjudicated element of a prior conviction in the absence of a valid admission by the defendant.


Proof that the prior conviction was a “serious felony” was limited to matters necessarily established by the prior conviction. A court may not go beyond the fact of the prior conviction.


For purposes of a sentence enhancement, the defendant’s prior conviction for “burglary of residence” was a serious offense, even though he entered the inhabited portion of a nonresidential building. Thus, a plea of nolo contendre to second-degree burglary of a residence was sufficient for sentence enhancement, although entry into a residence was not an element of that crime.

Penal Code section 1192.7, which generally prohibits plea bargains in cases involving "serious felonies," does not prohibit a plea bargain which would not result in a substantial change in sentence, even had the case been tried.

**Penal Code, Section 25(A)
Diminished Capacity**


Amendments to the Penal Code, including section 25(a), have abolished the defense of diminished capacity.


The court in People v. Spurlin, 156 Cal. App. 3d 119, 202 Cal. Rptr. 663 (1984), held that with the abrogation of diminished capacity through Proposition 8, the Legislature "eliminated the judicially created concept of non-statutory voluntary manslaughter." It only makes sense that one of the byproducts of diminished capacity, the reduction of murder to manslaughter due to mental defect, should fall within the elimination of diminished capacity itself.
The apparent meaning of the statutory language contained within Penal Code sections 25(a), 28(a) and 29 is that evidence of mental problems may be admitted to prove that the defendant lacked the requisite mental state but such evidence may not be introduced to prove that the defendant was unable to form the requisite mental state. Expert testimony may be introduced to show the state of mind of the defendant, but the expert may not testify as to whether the defendant had the requisite mental state necessary for the crime.

As a result of Proposition 8, diminished capacity has been abolished as a defense to murder.

As a result of Proposition 8, a defendant may not prove he was unable to form certain mental states due to intoxication. Rather, a defendant’s intoxication may be introduced into evidence to allow the trier of fact to determine if the defendant formed the requisite mental state necessary to commit the crime.

**Penal Code, Section 25(b)**

**Insanity Defense**

Noting that Proposition 8 reinstated the M’Naghten test.

Penal Code section 29, a statutory exception to section 28(d), prohibits expert psychiatric testimony as to whether the defendant did or did not have a required mental state, including malice aforethought. Therefore, psychiatric evidence that the defendant was acting in the heat of passion and that the ordinarily reasonable person in the same circumstances would also have acted in passion was properly excluded.


“Wrong” as the term is used in Penal Code section 25(b) refers both to legal wrong and moral wrong. In the sanity context, “wrong” means the violation of generally accepted standards of moral obligation and not those standards peculiar to the accused.


Penal Code section 25(b) reinstated the M’Naghten test as the standard of legal insanity in criminal prosecutions.


Noting that Penal Code section 25(b) resembled the M’Naghten test of insanity. However, because Proposition 8 is not to be retroactively applied the court used the American Law Institute test of insanity.
PENAL CODE, SECTION 1191.1
VICTIM'S RIGHT TO COMMENT

Victim impact statements which are permitted by section 1191.1 are not to be considered by the court in ruling on a section 190.4(e) motion.

The trial court's assumed consideration of statements made by the relatives of the victims in a Penal Code section 190.4(e) motion is error. However, the trial court's ruling should be set aside only if the error was prejudicial.

The court must consider statements made pursuant to Penal Code section 1191.1 in sentencing the defendant. Because the victims' statements are made at sentencing hearings rather than trial, the right to confrontation is not implicated and hearsay is not a ground for objection.

Penal Code section 1191.1 does not violate the Eighth Amendment to the United States Constitution in non-capital prosecutions.

Consideration of the victim impact statement by the sentencing authority is authorized for sentences imposed under the Determinate Sentencing Act. However, a capital jury may not consider that kind of "victim impact" evidence, and a court should not consider such evidence prior to ruling on a Penal Code section 190.4 motion.


The victim's father had the right to make a statement objecting to the plea bargain pursuant to Penal Code section 1191.1.


Under Penal Code section 1191.1, as to restitution, the notice and right to appear requirements are mandatory; if the requirements are not satisfied, the victim may challenge a ruling regarding restitution.


Penal Code section 1191.1 is clearly procedural both in form and effect and would be applied retroactively as to prior crimes. There is no Sixth Amendment right to cross examine victim statements where the statements are read to the court and given while not under oath.

California Constitution article 1, section 28 and Penal Code section 1191.1, are directory, not mandatory, and failure to notify the victim of a sentencing date did not deprive the trial court of jurisdiction to proceed. Further, the court held that it lacked the authority to afford relief, since no procedures to enforce the duty of notification, or remedies for the failure to do so, are provided in the applicable constitutional or statutory provisions.


Penal Code section 1191.1 was not intended to limit the information a sentencing court may consider in imposing a sentence. It only guarantees the victim a right to be heard and considered.