1990

115 Criminal Law. Initiative Constitutional Amendment and Statut

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. Th.. 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 t. 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.

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115 Criminal Law. Initiative Constitutional Amendment and Statute

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.* OT TO ABORTION, RELIGION, OR FREE SPEECH. IT'S NDORSED 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* licentiate 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)* 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 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.~~

~~(d) 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.~~

~~Instruct the jury in a matter of law.~~

~~Attempt to accomplish any other improper purpose.~~

~~(e) 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 288;~~ *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 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 recor the local, state or federal system in the State of California or in an 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 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), (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 t possibility of parole, in any case in which a special circumstan 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.

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

190.5. *(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 magistrate 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 the defendant is able to employ counsel or at public 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 determinatioin 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 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 agencies:

(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 this 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 a 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 following 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 however 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 threatening 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.

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(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.