

Proposition 9: Summary and Analysis

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OVERVIEW

On November 4th, 2008, California voters passed Proposition 9, the “Victims’ Bill of Rights Act of 2008: Marsy’s Law.” Backed by tough-on-crime financier Henry Nicholas, the measure amends both the California constitution and statutory law by expanding the rights of victims and their families, and significantly reducing rights for various prisoner populations and defendants in criminal and delinquency proceedings. Constitutional amendments are confined to the “Victims’ Bill of Rights,” originally enacted as a 1982 voter initiative (Prop 8).

Major elements:

- 1) Expands representation and consideration of victims’ interest in criminal and delinquency proceedings and strengthens victims’ right to restitution.
- 2) Reduces the frequency of parole consideration hearings for prisoners serving indeterminate life sentences.
- 3) Diminishes procedural rights for accused parole violators.
- 4) Restricts the early release of prisoners.

Several of Prop 9’s statutory and constitutional changes to enhance victims’ rights are redundant with existing law.¹ Those items are not included in the below summary.

The initiative states that statutory provisions established under Prop 9 cannot be changed (unless to further victims’ rights) without a 3/4 vote in each house of the state legislature. Typically, enacted initiatives require a 2/3 vote by the legislature.

¹ Examples include victims’ rights to: request a transcription of parole consideration hearings; confer with prosecutors regarding criminal proceedings; receive notice of all public proceedings at which the victim is entitled to be present; provide information to a probation department official conducting a pre-sentence investigation; participate in the parole process; the prompt return of property when no longer needed as evidence; refuse an interview, deposition, or discovery request by the defendant in criminal court proceedings.

PROP 9 CHANGES

Parole Consideration Hearings

The following law changes affect parole consideration hearings. Prisoners serving indeterminate life sentences (commonly referred to as “lifers”) are provided their first parole consideration hearing after a specified period of time has been served, according to the court-imposed sentence. (For example, a prisoner serving “25 years to life” will receive his or her first parole hearing after having earned 25 years of custody credit.) The Board of Parole Hearings is the state entity that presides over parole consideration hearings and designates prisoners to be fit or unfit for parole at the time of each hearing.

| Issue | Prior CA Law (Summarized) | Prop 9 Changes (Summarized) | Impact |
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| Frequency of Hearings | <p>Parole hearings are to occur annually after any hearing at which parole is denied.</p> <p>The Board of Parole Hearings may choose to lengthen a denial beyond 1 year if the prisoner is unlikely to be granted parole within 1 year.</p> <p>The maximum lapse between parole hearings for prisoners not convicted of murder is 2 years. The maximum lapse for lifer prisoners convicted of murder is 5 years.</p> | <p>Parole hearings are to occur every 15 years after any hearing at which parole is denied.</p> <p>The Board of Parole Hearings may choose to shorten this denial period only if “clear and convincing evidence” demonstrates that victims and public safety do not require the prisoner to be incarcerated for more than 10 years.</p> <p>The Board may decrease the lapse to 10, 7, 5 or 3 years.</p> <p>[PC 3041.5(b)]</p> | <ul style="list-style-type: none"> Decreases the frequency of parole consideration hearings for lifers. Prior law: default is 1 year lapse, with a max of 2 years (non-murder) or 5 years (murder). Change: default is 15 year lapse, with a minimum of 3 years for all lifers. Sets strict standards for the Board to shorten the denial period to less than 15 years. |
| Prisoner Appeals Re: Scheduling | Not addressed. | Prisoners may request that a hearing be advanced to an earlier date by submitting a written request to the Board, as well as a copy to the victim. Only one request may be submitted in any three year period. | <ul style="list-style-type: none"> Establishes procedures for prisoners to request an advancement of a scheduled hearing. Requests may be submitted to the Board once every three years, but there are no |

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| | | <p>The Board has sole discretion to grant or deny a request. Its decision shall be subject to review by a court or magistrate “only for a manifest abuse of discretion by the Board.”</p> <p>[PC 3041.5(d)]</p> | <p>standards for whether those requests are granted.</p> |
| Administrative Review of Extended Denial | <p>If the Board defers a hearing for 5 years (the maximum denial), the prisoner’s central file must be reviewed by the Board after 3 years have elapsed to reconsider the appropriateness of that decision. The Board may choose to advance the parole consideration hearing to occur within a year of this review.</p> <p>[PC 3041.5(b)(2)(B)]</p> | <p>Eliminates this clause.</p> | <ul style="list-style-type: none"> • No longer requires the Board to reevaluate its decision (after time has elapsed) for prisoners given lengthy parole denials. |
| Victim Notices | <p>Notice of parole hearings shall be sent to any victim (or the victim’s family) of a crime committed by the prisoner.</p> <p>Notification must be provided at least 30 days in advance of each hearing.</p> | <p>Notice of parole hearings shall be sent to any victim (or victim’s family) of <i>any</i> felony for which the prisoner has been convicted. This includes the crime leading to the life term, as well as any other felonies or crimes against a person.</p> <p>Notification must be provided at least 90 days in advance of each hearing.</p> <p>[PC (3043(a)]</p> | <ul style="list-style-type: none"> • Clarifies that all victims of all past convictions (felonies and crimes against the person) are entitled to notification of (and attendance at) parole hearings. • Requires further advance notice of parole consideration hearings for victims. |
| Victim Attendance | <p>With prior notification, hearings may be attended by: the victim, next of kin, two members of the victim’s immediate family <i>or</i> two</p> | <p>With prior notification, hearings may be attended by: the victim, next of kin, any family members <i>and</i> two “representatives.” The Board must permit attendance for all</p> | <ul style="list-style-type: none"> • Increases the number of victims’ affiliates permitted to attend parole consideration hearings. |

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| | <p>“representatives” designated for a particular hearing by the victim or victim’s family. (Representatives may not attend if the victim or victim’s family members are in attendance.)</p> <p>Representatives must be either a family or household member of the victim.</p> <p>The Board may use its discretion to determine whether more than two immediate family members may attend a hearing.</p> <p>In lieu of personal appearance, the victim, his/her next of kin, family members or representatives may file prior testimony with the Board. The Board shall consider this material in its decision. [PC 3043.2]</p> | <p>immediate family members requested to attend.</p> <p>Representatives may be any adult person selected by the victim or the family of the victim.</p> <p>The Board shall admit prior victim and/or witness testimony if the victim/witness is deceased or unavailable, or upon request by the victim/witness.</p> <p>[PC 3043(b),(c); PC 3041.5(c)]</p> | <ul style="list-style-type: none"> • Eliminates the requirement that representatives have a specified relationship to the victim. Allows representatives to attend hearings, even if the victim is present. • Requires the Board to admit prior victim testimony if the victim is deceased or unavailable. Also, requires the Board to admit prior victim testimony when requested by the victim, even if the victim attends the hearing. |
| <p>Victim Testimony</p> | <p>The victim, next of kin, family members <i>or</i> representatives are entitled to testify at hearings.</p> <p>Comments must be limited to the crime and the offender.</p> <p>Representatives may not participate in or provide testimony or written statements for any hearing at which the victim</p> | <p>The victim, his or her next of kin, family members <i>and</i> representatives are entitled to testify at hearings.</p> <p>Each individual’s testimony may include his or her views on any previous crimes against a person for which the prisoner has been convicted, the effect of those crimes on the victim, and the prisoner’s suitability for parole.</p> | <ul style="list-style-type: none"> • Significantly increases the number of victims’ family members permitted to testify at parole hearings. Also entitles representatives to testify at all hearings. • Expands the permitted content of victims’/victim affiliates’ testimony. |

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| | or a member of the victim's family is present. A representative's testimony must be limited to the effect of the crime on the victim. | [PC 3043(b)] | |
| Prisoners' Right to Challenge Victim Testimony | Though not addressed by law, prisoners and their attorneys are not currently permitted to ask questions of victims or victims' affiliates in parole consideration hearings. However, prisoners or their attorneys do object to victim testimony should the victim deviate from the allowed scope or raise unsupported claims. | Neither the prisoner nor the prisoner's attorney shall be entitled to ask questions of victims or victims' affiliates at parole consideration hearings. Victims' and victims' affiliates' testimony shall not be interrupted. [PC 3041.5(a); 3043(d)] | <ul style="list-style-type: none"> • Prohibits prisoners or their attorneys from questioning victims at parole consideration hearings, or otherwise challenging the content of their testimony. • Prohibits any interruption of victim testimony. |
| Scheduling Parole Hearings | Not addressed. | The Board must consider the "views and interests" of the victim before scheduling a subsequent parole consideration hearing. [PC 3041.5(b)(3)] | <ul style="list-style-type: none"> • Victims' interests must be considered when scheduling parole consideration hearings. |
| Stenographic Record of Hearings | The prisoner may request and receive a stenographic record (ie, transcription) of all parole consideration proceedings. Any member of the public may purchase a stenographic record of parole consideration proceedings. | The prisoner, all victims, victims' next of kin, family members and representatives may request and receive stenographic record (ie, transcription) of all parole consideration proceedings. [PC 3041.5(a)(4)] | <ul style="list-style-type: none"> • Victims may request and receive transcriptions of parole consideration proceedings. (Unclear whether this will be provided at state expense.) |
| Subsequent Hearing Following Rescission | The Board must schedule a parole consideration hearing within 12 months following the rescission of a previously granted parole date. | Following rescission of a previously granted parole date, the Board shall schedule the next parole consideration hearing according to the same guidelines for scheduling all parole consideration hearings. | <ul style="list-style-type: none"> • Extends the lapse between a rescission hearing and the prisoner's subsequent parole consideration hearing. Instead of a one-year (or less) lapse, the |

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| | | [PC 3041.5(b)(6)] | Board must impose a 15, 10, 7, 5 or 3 year denial. |
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Parole Revocation Procedures

All law changes in this area target parolee rights as established under *Valdivia v. Davis* in 2004. The initiative specifies that individuals facing parole revocation proceedings may *only* be entitled to the below listed rights. Therefore, this stipulation eliminates all other due process parolee rights established under *Valdivia*, in addition to those explicitly addressed in the measure (listed below). Those rights include (but are not limited to): written notice of parole revocation (including summary of charge and parolee's rights) provided to the parolee within 3 days of a parole hold; the right for parolee's counsel to subpoena and present witnesses and evidence; parolees' right to request a taped recording of the parole revocation hearing; the state's obligation to share non-confidential documents with the parolee's counsel; translation of all forms to Spanish when necessary for the parolee.

| Issue | Prior CA Law (Summarized) | Prop 9 Changes (Summarized) | Impact |
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| Probable Cause Hearing | The probable cause hearing must be held within 13 business days following arrest. | The probable cause hearing must be held within 15 days following arrest. [PC 3044(a)(1)] | <ul style="list-style-type: none"> Increases the maximum period of time in which the probable cause hearing must occur. |
| Revocation Hearing | The revocation hearing must be held within 35 days following arrest. | The revocation hearing must be held within 45 days following arrest. [PC 3044(a)(2)] | <ul style="list-style-type: none"> Increases the maximum period of time in which the revocation hearing must occur. |
| Right to Counsel | All parolees must be provided with legal counsel for parole revocation proceedings. | Public legal counsel may only be granted, upon request, to individuals who are indigent and are incapable of speaking in their own defense. [PC 3044(a)(3)] | <ul style="list-style-type: none"> Withdraws the right to legal counsel for all parolees in parole revocation proceedings. |
| Conditional Right to Confront Accuser | Parolees have a conditional right to confront and cross-examine adverse witnesses; that right only gives way if the government | All evidence, including hearsay, may be considered. Admission of hearsay evidence does not give rise to any confrontation right. | <ul style="list-style-type: none"> Eliminates the conditional confrontation right guaranteed by 14th Amendment due process; admits unreliable hearsay |

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| | shows good cause to deny confrontation. | [PC 3044(a)(5)(6)] | evidence. |
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Miscellaneous Victims' Rights

For all below changes, "victim" is defined as a person who "suffers direct or threatened physical, psychological or financial harm as a result of the commission or attempted commission of a crime or delinquent act" (Cal Const. Article 1, Sec. 28(e)). Use of the term "victim" also includes specified members of the victim's immediate family. The measure states that enumerated victims' rights are not afforded to individuals in custody for any offense.

| Issue | Prior CA Law (Summarized) | Prop 9 Changes (Summarized) | Impact |
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| Early Release for Prisoners to Alleviate Overcrowding | Not addressed. | Prisoners' court-imposed sentences are not to be curtailed by early release policies intended to alleviate overcrowding. The legislature must ensure sufficient funding to adequately house prisoners for the full terms of their sentences. Statutorily authorized credits are permitted to reduce prisoners' sentences. [Cal Const., Article 1, Sec. 28(f)(5)] | <ul style="list-style-type: none"> Prohibits the early release of prisoners to alleviate overcrowding. (Statutorily authorized prisoner credits are permitted.) |
| Limitation on Prisoners' Rights | Not addressed. | Victims have the right to expect that "the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this state." | <ul style="list-style-type: none"> Limits prisoners' rights and privileges to those articulated by the U.S. constitution and state law. |

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| | | [Cal Const., Article 1, Sec. 28(a)(5)] | |
| Defendants' Access to Confidential Information | Defendants or defendants' representatives may request access to victims' confidential information, such as mental health records and criminal history. The court may grant defendants' request if the information is found to be relevant. | Victims are entitled to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant. [Cal Const., Article 1, Sec. 28(b)(4)] | Revokes defendants' right to request access to confidential victim information (such as mental health record and criminal history). |
| Victim Refusal of Defendant Requests | Criminal Proceedings: Victims may refuse investigative requests by defendants or defendants' representatives. | Victims are entitled to refuse an interview, deposition, or discovery request by the defendant or his/her representatives. [Cal Const., Article 1, Sec. 28(b)(5)] | <ul style="list-style-type: none"> • Reaffirms victims' right to refuse an interview, deposition or discovery request by the defendant. (Does not affect current criminal proceeding practice, but could potentially apply to civil proceedings with significant implications.) |
| Victim Participation in Justice Proceedings | <p><i>Criminal Proceedings:</i> Victims are entitled to appear at the sentencing hearing and may speak on matters related to the crime, the penalty and the need for restitution. Victims are also entitled to appear and testify at parole hearings.</p> <p><i>Delinquency Proceedings:</i> Victims are entitled to express their views at the disposition hearing and at juvenile parole consideration hearings. Victims may attend any hearing in which he or she is</p> | Victims are entitled to testify, upon request, at any proceeding (including delinquency proceedings) involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue. | <ul style="list-style-type: none"> • Significantly expands the types of hearings at which victims can testify. |

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| | identified as the victim. A victim may be prohibited from attending hearings under certain specified circumstances, per the court's discretion. | [Cal Const., Article 1, Sec. 28(b)(8)] | |
| Restitution | Restitution shall be paid to victims, commensurate to losses, as determined by the court. Only in exceptional cases in which the victim suffered a loss may the court waive restitution. | Restitution shall be ordered in all cases in which the victim suffers a loss. (The court may no longer use its discretion to withhold victims' right to restitution in the face of "compelling and extraordinary reasons.") All payments and property collected by a person ordered to pay restitution must be first applied towards restitution payments to the victim. [Cal Const., Article 1, Sec. 28(b)(13)] | <ul style="list-style-type: none"> • Makes restitution mandatory for all cases in which the victim suffers a loss; the court's discretion is no longer admissible. • Prioritizes payment of restitution to victims over other offender fines and penalties. |
| Bail | Public safety shall be the court's primary consideration in setting, reducing or denying bail. | Public safety and the safety of the victim shall be the primary considerations in setting, reducing or denying bail. [Cal Const., Article 1, Sec. 28(f)(3)] | <ul style="list-style-type: none"> • Orders the court to explicitly consider the safety of the victim in setting bail. |
| Notification of Defendant's Release | Victims of serious and/or violent crimes may request notification of the offender's release or escape from custody. | Upon request, victims shall be informed of the defendants' scheduled release date, as well as the defendants' release or escape from custody. [Cal Const., Article 1, Sec 28(b)(12)] | <ul style="list-style-type: none"> • Entitles all victims – not only victims of violent/serious offenses – to request notification of the prisoner's release date and his or her release or escape from custody. |

DISCUSSION ON IMPACT

Early Prisoner Release

California state prisons are currently at 195% capacity, annually imposing a 10 billion dollar drain on the state's overburdened budget. Prop 9's limitation on early release could obstruct California's future attempts to address prison overcrowding. California currently does not release state prisoners early. However, early release for non-violent offenders has been seriously considered by state legislators as a means to ease strain on the bulging system. This provision eliminates that option.

The measure further obligates legislators to provide funding for prisoners to serve out their full prison or jail terms. With overcrowding resulting in unconstitutional prison conditions, this could plausibly be used by legislators as justification for expanding prison construction, rather than pursuing exceedingly less costly alternatives to incarceration for non-violent prisoners. Building more prisons sinks state funding that could otherwise be spent on education, public health and crime prevention – far more effective methods for reducing long-term crime rates.

Additionally, some California counties release jail prisoners early, primarily in response to federally-imposed inmate population caps. It is unclear how jail operations would be altered to accommodate this clause while maintaining compliance with federal orders. (For more details, please see the Legislative Analyst's Office online analysis of Proposition 9 at http://www.lao.ca.gov/ballot/2008/9_11_2008.aspx.)

Parole Consideration Hearings

Frequency of Hearings. For the past 20 years, the annual parole rate for "lifer" prisoners has been less than 1%. Prop 9 extends the default time lapse between parole consideration hearings from one to 15 years, further reducing prisoners' narrow chances at parole.

Statistically 0% of inmates are found suitable at their first parole hearing. However, nearly 70% of prisoners are given only 1 or 2-year denials, as opposed to the maximum 5-year lapse that the Board may impose. In other words, the Board is saying that the overwhelming majority of prisoners whose cases they review each year are close to being suitable for parole. This is expected, as all prisoners appearing before the Board have already exceeded minimum terms prescribed by the court. In most of these cases, the Board requires only minor changes from the prisoner prior to the subsequent hearing. For example, Board members may determine that a prisoner's parole plan must be firmed up, or that he or she should undergo one more psychological exam to support the Board's release decision. The minimum 3-year delay between hearings – as established by Prop 9 – is grossly excessive for such purposes and removes the Board's discretion to deny further consideration for only 1 or 2 years.

Moreover, under current circumstances, it is implausible that the Board would opt to decrease the lapse between hearings well below the 15-year default instituted by the measure. Currently, the Board may only *lengthen* a standard one-year parole denial if it finds that it is unreasonable to expect that parole will be granted the following year. Prop 9 sets a much tougher standard to *shorten* the standard 15 year denial time; the denial

length may only be curtailed if “clear and convincing evidence” demonstrates that the prisoner does not require the total length of additional incarceration to maintain the public’s and victims’ safety. With a current backlog of overdue parole consideration hearings already at nearly 1,500 cases, as well as growing pressure from prosecutors and victims’ rights groups to increase the period between hearings, there is little likelihood that commissioners will significantly cut back denials below 15 years.

For many lifer prisoners, a 15 year parole denial could be a death sentence. And for all prisoners serving indeterminate life terms, this provision all but eliminates the sense of hope that prisoners and their families feel in anticipation of a prisoner’s return to the community. It is this hope that keeps family and friends engaged in prisoners’ lives throughout their terms. It also keeps prisoners productive and driven throughout their time in prison, contributing to the population’s astoundingly low re-offense rate (less than 1%). The further severing of prisoners’ ties to the community makes both prisons and communities less safe – not more.

Further, most lifer prisoners are over the age of 40 at the time of their first parole board hearing. By significantly extending prisoners’ time in prison, this amendment will dramatically increase the housing and medical costs necessary to support this aging population.

Post-Rescission Hearing. 80-90% of parole dates granted are later reversed by the Governor or by the Board itself. Prior to Prop 9 enactment, the Board was required to schedule the next parole hearing within 12 months of a rescission. Prop 9 instead requires the Board to follow conventional guidelines for scheduling that hearing. This means that the Board may not schedule a subsequent hearing any sooner than 3 years – and may delay it for as long as 15 years – following rescission, despite the fact that it has already deemed the prisoner fit for parole (a designation afforded to less than 1% of individuals appearing before the Board). This amendment will result in the undue incarceration of individuals who have already fulfilled all requirements for release and who pose no significant threat to public safety.

Ex Post Facto Disputes. Prop 9’s changes regarding parole consideration hearings apply to prisoners convicted and sentenced prior to the law’s enactment. This may predictably draw a flood of “ex post facto” challenges, based on the constitutional provision stating that punishment cannot be altered after an individual has already been sentenced by a court of law.

Victims’ Role in Hearings. Prop 9 law changes significantly expand victims’ role in parole consideration hearings. These amendments are antithetical to parole consideration hearings’ stated purpose: to determine whether a prisoner poses an actual risk to society. While victims and their families are deeply impacted by these crimes – an impact that remains decades later – rarely do these individuals possess actual evidence relating to the prisoner’s current threat (which the California Supreme Court recently made clear is the only relevant issue in a parole hearing). This measure is intended to play on the Board’s sympathy for victims and their families, which may distract from the Board’s obligation to make an objective and sound judgment regarding the prisoner’s suitability for release.

Prop 9’s expanded definition for the victim “representative” could dramatically alter parole consideration proceedings. Prior to Prop 9’s enactment, a representative had to be a member of the victim’s family or household, and he or she was only permitted to attend or testify at hearings if the

victim and next of kin were unable to attend. Prop 9's elimination of these requirements opens the door for *any* individual to attend and testify against the prisoner in parole consideration hearing. For example, prosecutors could be hired to speak against the prisoner, and victims' rights groups could even send "professional victims" to testify at all parole consideration hearings.

The initiative further states that prisoners and prisoners' attorneys are prohibited from asking questions of victims or victims' affiliates at parole hearings, and no one may interrupt a victim's (or victim's affiliate's) testimony. Under current procedure, victim testimony occurs at the end of each hearing, and no further comment is permitted by the prisoner or prisoner's attorney following that testimony. As a result, the only opportunity to question the validity of the victim's testimony is to interrupt and draw the Board's attention to unsupported claims or deviation from the permitted scope. Under Prop 9, unproven allegations by victims will be accepted by the Board without providing prisoners with an opportunity to address those allegations.

Prop 9 additionally requires the Board to consider the "views and interests" of the victim before scheduling a subsequent parole consideration hearing. This could be interpreted to delay a hearing beyond the statutory due date if it is inconvenient for the victim to attend.

Parole Revocation Hearings

Prop 9 includes several provisions to curtail parolees' due process rights in parole revocation proceedings. These changes directly challenge the stipulated permanent injunction in *Valdivia v. Davis*, a 2004 federal court order establishing those rights. The permanent injunction establishing those rights resulted from findings that the State's pre-*Valdivia* parole revocation system violated procedural due process guaranteed by the U.S. Constitution.

Prop 9 eliminates procedural due process rights required by the U.S. Constitution as interpreted by the Supreme Court. Parolees will spend longer periods in custody before receiving a hearing with a neutral hearing officer to determine whether a parole violation had occurred. Unreliable hearsay evidence may be admitted without cross-examination of adverse witnesses, resulting in more returns to custody based on faulty evidence. Parolees no longer have State-appointed counsel. Prop 9 creates a one-sided system designed to revoke parole and exacerbate the prison overcrowding crisis.

Prisoners' Rights

The initiative includes a vague provision limiting prisoners' rights to those designated in the U.S. constitution and California statutes. The provision could potentially negate various rights now afforded to prisoners, such as visitation, higher education and recreational programming. Additionally, the change could interfere with some court-ordered consent decrees requiring the Department of Corrections and Rehabilitation to provide prisoners with various rights beyond those mandated by state and federal law. Under the strain of severe overcrowding, legislators could use this provision to cut "extraneous" costs in order to redirect funding towards prison expansion. The likelihood of this prospect is heightened by Prop 9's requirement that legislators fund prisoners' full terms.

Restitution

Prior to Prop 9's enactment, the law indicated that a court may waive restitution for cases in which a defendant "unwillfully" is unable to make the ordered payment. For example, the court could take this stance if a defendant was obligated to support a disabled family member, or if the defendant was disabled and unable to work. Prop 9 removes the court's discretion in the matter of restitution, and mandates the payment of restitution to all victims who have suffered a loss.

Prop 9 also prioritizes direct payment to victims over other financial obligations, likely resulting in decreased funds for various state and local agencies. According to the Legislative Analyst's Office:

"Currently, a number of different state and local agencies receive funding from the fines and penalties collected from criminal offenders. For example, revenues collected from offenders go to counties' general funds, the state Fish and Game Preservation Fund for support of a variety of wildlife conservation programs, the Traumatic Brain Injury Fund to help adults recover from brain injuries, and the Restitution Fund for support of crime victim programs. Because this initiative requires that all monies collected from a defendant first be applied to pay restitution orders directly to the victim, it is possible that the payments of fine and penalty revenues to various funds, including the Restitution Fund, could decline."

The Restitution Fund is applied to support several state programs in the areas of violence prevention, intervention and crime victim support. In 2007-2008, programs supported by the Restitution fund included: the Equality in the Prevention of Domestic Violence Program; the Internet Crimes Against Children Program; the California Gang Reduction and Intervention Program; and the Witness Protection Program.

FISCAL EFFECTS

The potential fiscal effects of Prop 9's changes are uncertain, largely due to the unpredictable nature of how many of the changes may be interpreted and implemented. Also, some provisions (such as the restriction on early prisoner release) do not influence existing processes, but may have a dramatic effect on future actions taken by the state.

Overall, the Legislative Analyst's Office predicts that the measure could eliminate state savings amounting to hundreds of millions of dollars annually, while saving the state somewhere in the low tens of millions dollars annually.

For more details, please refer to the Legislative Analyst's Office online analysis: http://www.lao.ca.gov/ballot/2008/9_11_2008.aspx.