IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re ROY THINNES BUTLER,
on Habeas Corpus.

A139411

ORDER DENYING RESPONDENT'S MOTION TO MODIFY ORDER REGARDING STIPULATED SETTLEMENT

BY THE COURT*

I.

Background

Petitioner, Roy Thinnes Butler, a parole-eligible life prisoner, challenged the constitutionality of the process used by the Board of Parole Hearings (Board) to determine whether prisoners such as him are suitable for release on parole. Butler maintained that the Board's practice of deferring the fixing of a prisoner's base and adjusted base terms—which measure life prisoners' individual culpability for the base offense and therefore "represent an approximation of the punishment the Board deems proportionate to the manner in which the inmate committed his offense" (*In re Butler* (2015) 236 Cal.App.4th 1222, 1243 (*Butler*))—until after he or she was first deemed suitable for release effectively eliminated any meaningful consideration of proportionality in sentencing during the most crucial portion of the parole process, and therefore facilitated imposition of constitutionally excessive punishment.

On December 13, 2013, before the completion of briefing, the parties settled their dispute by stipulating to an order of this court directing the Board to announce and implement new policies and procedures that would result in the setting of base terms at a

* Before Kline, P.J., Richman, J., and Stewart, J.

life prisoner's initial parole consideration hearing or, if that hearing had already taken place, at the next hearing resulting in a grant or denial of parole.

On December 16, 2013, we issued the order stipulated to by the parties. As material, the Order directed the Board to:

1. At its next publicly noticed meeting, "announce a policy of calculating the base term and adjusted base term for all life inmates at the initial parole consideration hearing" and to "implement this policy on the first day of the calendar month following the aforementioned meeting";

2. Establish the base term pursuant to matrices and directives found in specified sections of title 15 of the California Code of Regulations, and adjust the base term for enhancements pursuant to other specified sections of the same Board regulations;

3. Calculate the base term and adjusted base term at the inmate's initial or next scheduled parole consideration hearing that results in a grant of parole, a denial of parole, a tie vote, or a stipulated denial of parole;

4. Initiate the process to amend its regulations within 90 days of our Order so that the regulations reflect the term setting practices stipulated to by the parties and ordered by the court, in accordance with Government Code section 11340 et seq.;

5. Cite our December 16, 2013, Order and submit it as supporting documentation in the Board's initial statement of reasons, as required by Government Code section 11346.2, subdivision (b); and

6. "In good faith seek to complete the rule-making process as soon as reasonably practicable."

The purposes and significance of the foregoing requirements are described in *Butler, supra,* 236 Cal.App.4th 1222.

The last paragraph of the stipulated order provides that: "This court shall retain jurisdiction of this case until the amended regulations, conforming to the base term setting practices as described in this order, become effective."

At an executive meeting in March 2014, shortly after the Board commenced the rulemaking required by the stipulated order, the Board's Executive Officer announced

that the Board would on April 1, 2014, begin calculating base terms and adjusted base terms for all prisoners, the Board was updating its Lifer Scheduling and Tracking System database "to enable commissioners to enter the requisite base-term data," and the Board had provided commissioners and deputy commissioners memoranda informing them how to calculate base and adjusted base terms in accordance with the settlement. That month, the Board began calculating base and adjusted base terms "for all life term inmates" during their parole hearings.

However, at the Board's January 2016 meeting, the Executive Officer told Board members that the Governor had signed Senate Bill No. 230 (SB 230) (Stats. 2015, ch. 470), which amended Penal Code section 3041[1] and "would require the immediate release of any life-term inmate whose parole grant becomes effective once they have reached their minimum eligible parole date." In the Executive Officer's view, this change "eliminated the Board's authority to calculate base terms and adjusted base terms." The Board decided to continue calculating base terms and adjusted base terms as required by the settlement and stipulated order, and seek modifications of the court order that would relieve it of that responsibility. The Board represents that, since April 1, 2014, it has performed "approximately 7,000" base term calculations.

There are, however, two groups of life prisoners for whom the Board has apparently never calculated base terms and adjusted base terms pursuant to the stipulated order. The Board determined that subsequent to the stipulated order it lost authority to set base and adjusted base terms for such prisoners for reasons additional to SB 230, and it has never set base and adjusted base terms for prisoners within these groups.

The first group are life inmates who committed offenses as minors and had served at least 15 years of incarceration. The Board states that under the amendments to sections 3041, 3046, and 4801 effectuated by Senate Bill No. 260 (SB 260) (Stats. 2013, ch. 31D), it has "no authority to set base terms for youth offenders who are granted parole because

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[1] All subsequent statutory references are to the Penal Code.

the law requires their immediate release from prison once their parole grant becomes effective."

The second group for whom the Board claims it has not and cannot set base terms and adjusted base terms are life inmates over 60 years of age who have served 25 continuous years of custody. The Board states that a February 10, 2014 federal court order in *Plata v. Brown* (N.D. Cal. Case No. 01-1351, Docket No. 2766), and the companion case *Coleman v. Brown* (E.D. Cal. Case No. 2:90-cv-0520) (the *Coleman* Order) required the Board to implement "an elderly parole measure that provides for parole consideration to inmates who are over 60 years old and have served 25 continuous years of custody." The Board states that it cannot set a base term for inmates eligible for elderly parole because, like all offenders under SB 230, and youthful offenders under SB 260, "they too must be immediately released from prison once their parole grant becomes effective."

II.

On January 28, 2016, the Board filed the motion before us asking to be relieved of the responsibility to set base terms and adjusted base terms for all life prisoners on the ground that SB 230 deprives it of the authority to do so, as also do SB 260, and the *Coleman* Order.

As the Board sees it, after SB 230, SB 260, and the *Coleman* Order, "the minimum eligible parole date is now the functional equivalent of the base term"; therefore, the only responsibility that should be imposed on the Board under the stipulated order is to "require that all life prisoners be notified of their minimum eligible parole date at the initial parole consideration hearing."

As we shall explain, the Board's authority to set base terms and adjusted base terms is entirely unimpaired by any of the changes in the law posited by the Board as depriving it of the authority to set base and adjusted base terms. At oral argument on this motion the Board virtually conceded that nothing it is required to do by the stipulated order is prohibited by SB 230, SB 260, or the *Coleman* Order.

Moreover, the minimum eligible parole date, which is normally seven years, is fixed by statute (§ 3046, subd. (a)(1)(2)), and already known by most life prisoners, so the notification the Board agrees to provide life prisoners has little if any value to them.

A.

SB 230 Does Not Make a Material Change in the Law Warranting Modification of the Stipulated Order

"It is settled that where there has been a change in the controlling facts upon which a permanent injunction [is] granted, or the law has been changed, modified or extended, or where the ends of justice would be served by modification or dissolution, the court has the inherent power to vacate or modify an injunction where the circumstances and situation of the parties have so changed as to render such action just and equitable. [Citations.] This principle governs even though the judgment providing the injunctive relief is predicated upon stipulation of the parties. [Citation.]" (*Welsch v. Goswick* (1982) 130 Cal.App.3d 398, 404-405.)

The statutory change in the law the Board primarily relies on, and the one that is most comprehensive, is the amendment of section 3041 resulting from SB 230 in 2015. Prior to the amendments, subdivision (a) of section 3041 required that the Board shall set "the release date . . . in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public," and "shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime." SB 230 deleted this language and added the following new language: "Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date." (§ 3041, subd. (a)(4).)

The Board maintains that SB 230 represents a material change in the law requiring modification of the stipulated settlement order because the measure "eliminated the

Board's authority to set base terms when it deleted the requirement that the Board set a 'release date . . . in a manner that will provide uniform terms,' and now "requires the immediate release of a life prisoner whose parole grant has become effective and the prisoner has served his or her minimum eligible parole date. (Pen. Code, § 3041, subd. (a)(1)(4)." Thus, according to the Board, because it now "has no authority to hold prisoners granted parole to a base term that exceeds their minimum eligible parole date[,] . . . a prisoner's base term as set by the Board has ceased to have any legal significance." The claim is unsustainable.

First, the Board is confusing its base term fixing obligations—addressed in the settlement agreement—with its parole-granting authority, which SB 230 addressed. The Board's authority to set base terms does not derive from section 3041, and SB 230 has little to do with the setting of base terms or the constitutional principle of proportionality in sentencing.[2] Section 3041 vests the Board with the power to grant parole and prescribes the manner in which that power is to be exercised. As stated in *In re Dannenberg* (2005) 34 Cal.4th 1061 (*Dannenberg*), "section 3041 expressly instructs the Board to set an indeterminate life prisoner's parole release date, which is "the equivalent of [prison] term-setting in such cases," unless it finds the prisoner still dangerous and therefore unsuitable for release. (*Id.* at p. 1097.) As a result of the changes in section 3041 mandated by SB 230, the "release date" is now the date parole is granted. Contrary to the Board's argument, the stipulated order does not conflict with section 3041 by precluding the Board from releasing prisoners who have been granted parole but have not yet reached their base terms. The base term has never been considered the minimum term a prisoner must serve; its function is to indicate the point at which a prison term becomes constitutionally excessive. The base term now serves simply as an "approximation" of the punishment the Board considers proportionate to the culpability of a particular prisoner. (*Butler, supra*, 236 Cal.App.4th at p. 1243.) Thus, the order in

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[2] Which is related to but not the same as the principle of uniformity in sentencing, to which section 3041 formerly referred. (See *Butler, supra*, 236 Cal.App.4th at pp. 1231-1241.)

no way affects a prisoner's release after parole is granted; it simply requires the Board to calculate prisoners' base terms in a timely manner.

Second, we reject the Board's related arguments, set forth in its motion papers, that after SB 230 "the minimum eligible parole date is now the functional equivalent of the base term," and that because "[b]ase terms no longer represent an approximation of a proportionately appropriate prison term," and indeed "envision longer terms than minimum eligible parole dates," the continued calculation of base terms is "an idle act without any practical significance." These statements are perplexing. They suggest that SB 230 requires the Board to grant life prisoners parole on their minimum eligible parole dates, which is certainly not the case, and that the base term prescribes a minimum term before which a life prisoner cannot be released, which is untrue. As the words indicate, the minimum eligible parole date, which is fixed by the Legislature, not the Board (§ 3046, subd. (a)(1)(2)), does no more than identify the earliest time at which a parole eligible life prisoner may be released on parole; it does not specify the time at which he or she must be released. The function of the adjusted base term is not to set a release date but, as we have said, to indicate whether the denial of parole might result in constitutionally excessive punishment.

The purpose of the settlement and stipulated order is to alter the parole process so that the setting of the base and adjusted base term are no longer deferred until after the grant of parole (which may be long after the adjusted base term) but fixed at the initial parole hearing, so that parole officials know at the time they decide whether to grant or deny parole whether denial might result in punishment disproportionate to the individual culpability of the life prisoner.

Nothing in SB 230 indicates a legislative intent to interfere in any way with this advancement of the time at which the base and adjusted base term is calculated. The purpose of the measure was simply to eliminate delay in releasing prisoners found suitable for release and granted parole. The stipulated order actually facilities the goal of SB 230 because the Board's former practice of deferring calculation of the base term

until after parole was granted was one of the causes of the delay in releasing prisoners SB 230 sought to eliminate.

As explained in *Dannenberg*, *supra*, 34 Cal.4th at pages 1096-1098, the enactment of the Determinate Sentence Law (DSL) in 1975 relieved the Board of the need to fix actual maximum terms for parole eligible life prisoners, as had been required under *In re Rodriguez* (1975) 14 Cal.3d 639 (*Rodriguez*), and of the need to consider uniformity in sentencing prior to determining whether a life prisoner is suitable for release on parole. However, *Dannenberg* recognizes that no prisoner, "even if sentenced to a life-maximum term, . . . can be held for a period grossly disproportionate to his or her individual culpability for the commitment offense." (*Dannenberg,* at p. 1096.) Citing *Rodriguez,* the *Dannenberg* court acknowledged that "section 3041, subdivision (b), cannot authorize such an inmate's retention, even for reasons of public safety, beyond this constitutional maximum period of confinement." (*Dannenberg,* at p. 1096.) This acknowledgment implies that the decision whether to deny or grant parole should not be made without a prior Board inquiry whether the denial of parole might result in a constitutionally excessive sentence, which is all that the settlement and stipulated order seek to achieve.

The facts that the base term no longer represents the maximum term that can actually be imposed on a life prisoner, and uniformity in sentencing need not be considered prior to the grant of parole, do not mean the base and adjusted base terms are now meaningless; if it did the Board would not have continued setting those terms after repeal of the Indeterminate Sentence Law (ISL) and enactment of the DSL. As we have said, the base and adjusted base terms the Board has been calculating for more than four decades now "represent[s] an approximation of the punishment the Board deems proportionate to the particular prisoner's offense." (*Butler*, *supra*, 236 Cal.App.4th at p. 1243.)[3] By requiring the Board to calculate the base and adjusted base term at the

[3] The purposes of the base and adjusted base terms prior to the settlement and stipulated order is not clear because, under that practice, the base and adjusted base terms had not been calculated at the time of the initial and all subsequent parole hearings, and

initial parole hearing rather than after the grant of parole, the settlement and stipulated order better assure life prisoners will not suffer constitutionally excessive punishment, and that their terms will be fixed with sufficient promptness to permit any requested review of the proportionality of particular punishment resulting from a denial of parole to be accomplished before the affected prisoner has been confined beyond the constitutionally permitted term. Nothing in SB 230 indicates a legislative intent to interfere with those goals. Indeed, setting life inmates' base and adjusted base terms before they are granted parole—rather than afterwards, which helped create the delay SB 230 was designed to eliminate—is entirely consistent with the purposes of SB 230.

B.

SB 260 Does Not Make a Material Change in the Law Warranting Modification of the Stipulated Order

The Board acknowledges in its motion that, apparently without advance notice to Butler's counsel, it ceased setting base and adjusted base terms for youthful offenders who had served 15 years of incarceration, and inmates over 60 years of age who have

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were only calculated once parole was ultimately granted. Previously, under the ISL, the Board calculated base terms promptly after an inmate was received in prison, as required by *Rodriguez*, *supra*, 14 Cal.3d at page 654, footnote 18. However, that practice changed after enactment of the DSL, when the Office of the Attorney General sent a memorandum to all criminal deputies on August 22, 1979, stating that, "[i]n light of the fact that [after the enactment of the DSL] the [parole board] has no term fixing power . . . *Rodriguez* is no longer applicable." The Board acknowledges the authenticity of the memorandum, which was attached as exhibit A to Butler's writ petition and, so far as the record shows, was never formally made available to the public. The Board's decision to stop immediately setting base terms pursuant to *Rodriguez* and, instead, to defer setting them until after a prisoner's grant of parole appears to be based on the advice contained in the 1979 memorandum. The memorandum's conclusion, insofar as it applies to prisoners who remain indeterminately sentenced under the DSL, is legally questionable, because indeterminately sentenced prisoners are treated much the same under the DSL as they were under the ISL. Furthermore, if the Board believed *Rodriguez* was "obsolete," it remains unclear why it continued setting base terms at all and what function was served by its deferral in setting those terms until after the grant of parole.

served 25 continuous years of custody, almost two years ago, despite the fact that the stipulated order and applies to "all life prisoners" and contemplates no exceptions.

The Board justifies the exception of youthful offenders on the ground of changes to the DSL mandated by SB 260, which expedited parole hearings for life prisoners who committed their offenses as minors and have served at least 15 years of incarceration. [4] The change in the law made by SB 260 that the Board relies on includes the statement in subdivision (c) of section 3046 that "an inmate found suitable for parole pursuant to a youth offender parole hearing as described in section 3051 shall be paroled regardless of the manner in which the board set release dates" pursuant to other specified provisions of the DSL. The Board claims it cannot comply with the stipulated order with respect to youth offenders, because under the amendment it "has no authority to set base terms for youth offenders who are granted parole because the law requires their immediate release from prison once their parole grant becomes effective."

This claim is identical to the one we have just rejected. The Board's authority to set base terms does not arise under any of the statutes amended by SB 260 but under our order, to which it stipulated, which facilitates enforcement of the cruel and/or unusual punishment provisions of the federal and state Constitutions that protect all life prisoners. Section 3051, which was added by enactment of SB 260, simply expedites parole eligibility for youthful offenders and requires the Board to give weight to "the diminished culpability of juveniles as compared to adults." (§ 3051, subd. (f)(1).) The Board acknowledges that SB 260 does not prevent the Board from denying a youthful offender parole upon a finding he or she remains dangerous and is therefore not "suitable" for release. Thus, as in the case of all life prisoners, the only limitation on the Board's discretion to deny parole is the cruel and/or unusual punishment provisions of the federal and state Constitutions, the application of which to the parole process is assisted by the term-fixing requirements specified in the settlement and stipulated order. Youth

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[4] SB 261, which became effective January 1, 2016, expanded the scope of SB 260 to life prisoners who were convicted of a controlling offense before he or she had attained 23 years of age. (§ 3051, subd. (b)(3).)

offenders are no less in need of those protections than other life prisoners. Neither section 3046 nor any other statute amended by SB 260 creates a material change in the law justifying modification of the stipulated order.

C.

The Coleman Order Does Not Make a Material Change in the Law or Controlling Facts Warranting Modification of the Stipulated Order

The Board justifies its previously undisclosed cessation of term-fixing for inmates over 60 years of age who have served 25 continuous years of custody, on the ground of an order of the three-judge federal court in *Plata* and the companion case *Coleman*, directing the state to reduce the overall prison population in order to eliminate overcrowding found to have resulted in cruel and unusual punishment of prison inmates. After reciting that the Governor and other state defendants "have represented that, in conformance with the terms of this order, they will develop comprehensive and sustainable prison population reduction reforms," the *Coleman* Order granted the defendants' request for an extension of time to February 28, 2016, to comply with the three-judge court's June 30, 2011, order to reduce California's prison population to 137.5 percent of design capacity. In reliance on the defendants' representations that they would develop comprehensive and sustainable prison population-reduction reforms, the *Coleman* Order directed the state defendants to "immediately implement" eight specified measures, one of which was to "[f]inalize and implement a new parole process whereby inmates who are 60 years of age or older and have served a minimum of twenty-five years of their sentence will be referred to the Board of Parole Hearings to determine suitability for parole."

The Board claims compliance with this requirement obliges it to exclude "inmates eligible for elderly parole" from the life prisoners to whom the stipulated order applies "because they too must be immediately released from prison once their parole grant becomes effective." This argument is as baffling as the Board's arguments we have just rejected. As we hope to have made clear, the sole purpose of the settlement and

stipulated order is to promote consideration of a life prisoner's individual culpability for the base offense *before* the Board determines whether to grant or deny parole, because that is an effective way of introducing the constitutional concept of proportionality of sentencing into the parole process before the Board decides whether to deny a request for parole. Prompt fixing of the base and adjusted base term is hardly inconsistent with the *Coleman* Order, the purpose of which is to reduce the prison population. The life prisoners most likely to have suffered punishment disproportionate to their individual culpability, as measured by the Board's own base term matrices, are the elderly prisoners who have been imprisoned longest.

D.

The Cases the Board Relies Upon are all Distinguishable

The cases most heavily relied upon by the Board—*System Federation v. Wright* (1961) 364 U.S. 642; *Welfare Rights v. Frank* (19944) 25 Cal.App.4th 415; and *Mendly v. County of Los Angeles* (1994) 23 Cal.App.4th 1193—are easily distinguished. In all of them the law enforced by the challenged injunctive order was subsequently repudiated by the Legislature, rendering that which the challenged orders permitted clearly impermissible. That cannot be said of the amendments to the Penal Code made by SB 230 and SB 260, nor can it be said of the *Coleman* Order.

For the foregoing reasons, the Board's Motion to Modify the Stipulation and Order Regarding Settlement filed with the court on December 16, 2013, is hereby DENIED.

Dated: JUL 27 2016

KLINE, P.J.

Kline, P.J.

PROPOSED REGULATORY TEXT

Proposed additions are indicated by underline and deletions are indicated by ~~strikethrough~~.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PAROLE HEARINGS

CHAPTER 3. PAROLE RELEASE

Article 14. Parole Consideration Hearings for Youth Offenders is ***added*** to read as follows:

ARTICLE 14. PAROLE CONSIDERATION HEARINGS FOR YOUTH OFFENDERS

§ 2440. Youth Offender Defined.

(a) A youth offender is an inmate who meets all of the following criteria:
(1) The inmate committed his or her controlling offense prior to reaching age 23;
(2) The inmate was sentenced to a determinate term or a life term with the possibility of parole;
(3) The inmate is currently incarcerated for the offense or group of offenses that includes the controlling offense; and
(4) The inmate is not ineligible based on any factors listed in subdivision (c) of this section.

(b) For purposes of determining whether an inmate qualifies as a youth offender, the "controlling offense" is the single crime or enhancement for which any sentencing court imposed the longest term of imprisonment.

(c) Inmates who committed their controlling offense prior to reaching age 23 are ineligible for parole under this article if one or more of the following factors exist:
(1) The inmate is serving a sentence of death or life without the possibility of parole;
(2) The inmate was sentenced on the controlling offense for a prior felony conviction under Penal Code sections 1170.12 or 667(b)-(i);
(3) The inmate was sentenced on the controlling offense for a one-strike sex offense under Penal Code section 667.61;
(4) The inmate was convicted of any offense after reaching age 23 for which "malice aforethought" is a necessary element of the offense; or
(5) The inmate was convicted of any offense after reaching age 23 for which the inmate was sentenced to a life term of any length.

(d) If two or more offenses carry identical sentence lengths and are the inmate's longest terms of imprisonment, the controlling offense shall be determined as follows:
(1) If none of the sentences were imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is whichever offense the inmate committed first in time.
(2) If one sentence was imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is that offense.

(3) If more than one sentence was imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is whichever of those offenses the inmate committed first in time.

(e) If a sentence on an offense is imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667, or section 667.61, but the offense is not the controlling offense, this shall not be the basis for ineligibility under subdivision (c) of this section.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 667, 667.61, 1170.12, 3051(a), and 3051(h), Penal Code.

§ 2441. Youth Offender Determinations.

(a) Youth offender determinations by the department are subject to the appeal process found in California Code of Regulations, Title 15, sections 3084-3084.9. Inmates contesting a youth offender determination by the department must submit a CDCR Form 602 Inmate Appeal to Correctional Case Records Services of the department under that appeal process.

(b) Youth Offender Determinations Defined. Correctional Case Records Services of the department determines whether an inmate qualifies as a youth offender as defined in section 2440 of these regulations, and calculates the Youth Parole Eligibility Date (YPED) as defined in subdivision (c) of this section for all inmates who qualify as youth offenders. For purposes of this article, both determinations are referred to as "youth offender determinations."

(c)(1) A YPED is the earliest date on which a youth offender is eligible for a parole consideration hearing pursuant to Penal Code section 3051, subdivision (b). A youth offender's YPED is set according to the following criteria:
(A) If the controlling offense is a determinate term of any length, the YPED is the first day after the youth offender has completed 14 continuous years of incarceration;
(B) If the controlling offense is a life term of less than 25 years to life, the YPED is the first day after the youth offender has completed 19 continuous years of incarceration; or
(C) If the controlling offense is a life term of 25 years to life, the YPED is the first day after the youth offender has completed 24 continuous years of incarceration.

(2) For purposes of subdivision (c), "incarceration" means detention in any city or county jail, local juvenile facility, state mental health facility, Division of Juvenile Justice facility, or department facility.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Section 3051, Penal Code.

§ 2442. Youth Offender Determination Review by the Board.

(a)(1) If an inmate is not eligible as a youth offender under section 2440, subdivision (c), as determined by Correctional Case Records Services, and the inmate has received a Third Level Response from the department to his or her Form 602 Inmate Appeal challenging the determination, the inmate may submit a one-time request for review by the board.
(2) If an inmate has been deemed eligible as a youth offender by Correctional Case Records Services but disagrees with the department's calculation of his or her YPED, and the inmate has received a Third Level Response from the department to his or her Form 602 Inmate Appeal challenging the calculation of the YPED, the inmate may submit a one-time request for review by the board.

(b) A request under subdivision (a) of this section for review by the board of a youth offender determination shall be submitted in writing by the inmate.

(c) In submitting a request for review by the board of a youth offender determination, the inmate shall submit a copy of the Third Level Response from the department to his or her Form 602 Inmate Appeal, the absence of which shall result in the automatic return of the request.

(d) In submitting a request for review by the board of a youth offender determination, the inmate is encouraged to submit the following documents:
(1) A brief explanation of the reason for requesting review;
(2) A copy of the inmate's birth certificate; and
(3) A copy of all the inmate's sentencing documents, in particular all the abstracts of judgment issued by all courts that have sentenced the inmate.

(e) The Chief Counsel shall review the inmate's request and send its written response to the inmate no later than six months after receipt of the request.

(f) If the Chief Counsel determines that a change in youth offender status or YPED is warranted, the board shall issue a miscellaneous decision explaining the reasons for its determination. The board shall forward a copy of this decision to Correctional Case Records Services of the department.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Section 3051, Penal Code.

§ 2443. Scheduling of Hearings.

(a) Youth offenders shall be scheduled for their initial parole consideration hearings within six months following their YPED unless the youth offender is entitled to an earlier parole consideration hearing pursuant to any other provision of law.

(b) Subsequent parole consideration hearings shall be scheduled for youth offenders in accordance with Penal Code 3041.5(b)(3).

(c) Notwithstanding subdivisions (a) or (b), when a youth offender's earliest possible release date (EPRD) is calculated to occur prior to the date on which the youth offender will complete his or her 15th year of incarceration, the board shall not schedule a hearing.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.5 and 3051, Penal Code.

§ 2444. Youth Offender Factors.

(a) Diminished Culpability of Youths as Compared to Adults. The diminished culpability of youths as compared to adults includes, but is not limited to, consideration of the following factors:
(1) The ongoing development in a youth's psychology and brain function;
(2) The impact of a youth's negative, abusive, or neglectful environment or circumstances;
(3) A youth's limited control over his or her own environment;
(4) The limited capacity of youths to extricate themselves from dysfunctional or crime-producing environments;
(5) A youth's diminished susceptibility to deterrence; and
(6) The disadvantages to youths in criminal proceedings.

(b) Hallmark Features of Youth. The hallmark features of youth include, but are not limited to, consideration of the following factors:
(1) Immaturity;
(2) An underdeveloped sense of responsibility;
(3) Impulsivity or impetuosity;
(4) Increased vulnerability or susceptibility to negative influences and outside pressures, particularly from family members or peers;
(5) Recklessness or heedless risk-taking;
(6) Limited ability to assess or appreciate the risks and consequences of behavior.
(7) Transient characteristics and heightened capacity for change;

(c) Subsequent Growth and Increased Maturity of the Inmate While Incarcerated. The subsequent growth and increased maturity of the inmate while incarcerated includes, but is not limited to, consideration of the following factors:
(1) Considered reflection;
(2) Maturity of judgment including, but not limited to, improved impulse control, the development of pro-social relationships, or independence from negative influences;
(3) Self-recognition of human worth and potential;
(4) Remorse;
(5) Positive institutional conduct; and
(6) Other evidence of rehabilitation.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 667, 667.61, 1170.12, 3051, Penal Code; *Graham v.*

Florida (2010) 560 U.S. 48, 130 S.Ct. 2011; Miller v. Alabama (2012) 132 S.Ct. 2455; People v. Caballero (2012) 55 Cal.4th 262, 282 P.3d 291, 145 Cal.Rptr.3d 286; Moore v. Biter (2013) 725 F.3d 1184; Roper v. Simmons (2005) 543 U.S. 551; People v. Franklin (2016) 63 Cal. 4th 261; Montgomery v. Louisiana (2016) 136 S. Ct. 718.

§ 2445. Comprehensive Risk Assessments

When preparing a risk assessment under this section for a youth offender, the psychologist shall also take into consideration the youth factors described in section 2444 and their mitigating effects. The psychologist's consideration of these factors shall be documented within the risk assessment under a unique heading from the remainder of the report.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.5 and 3051.

§ 2446. Parole Consideration Hearings.

(a) Panels shall conduct parole consideration hearings for youth offenders in compliance with the requirements for initial and subsequent parole consideration hearings described in this chapter and Penal Code sections 3040, et seq.

(b) In considering a youth offender's suitability for parole, the hearing panel shall give great weight to the youth offender factors described in section 2444: (1) the diminished culpability of youths as compared to adults; (2) the hallmark features of youth; and (3) any subsequent growth and increased maturity of the inmate.

(c) The panel shall review and consider any written submissions that provide information about the youth offender at the time of his or her controlling offense, or the youth offender's growth and maturity while incarcerated, from a youth offender's family members, friends, school personnel, faith leaders, or representatives from community-based organizations.

(d) A hearing panel shall find a youth offender suitable for parole unless the panel determines, even after giving great weight to the youth offender factors, that the youth offender remains an unreasonable risk to public safety.

(e) If a hearing panel finds a youth offender unsuitable for parole, the panel shall impose a denial period in accordance with Penal Code section 3041.5, subdivision (b), paragraph (3).

(f) Nothing in this article is intended to alter the rights of victims at parole consideration hearings.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3046(c), 3051, and 4801(c), Penal Code; *In re Lawrence (2008) 44 Cal.4th 1181, 1214*.

PROPOSED REGULATORY TEXT

Proposed additions are indicated by underline and deletions are indicated by ~~strikethrough~~.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PAROLE HEARINGS
CHAPTER III. PAROLE RELEASE
ARTICLE 2. INFORMATION CONSIDERED

§ 2240. ~~Psychological~~ Comprehensive Risk Assessments ~~for Life Inmates~~.

(a) ~~Prior to a life inmate's initial parole consideration hearing, a Comprehensive Risk Assessment will be performed by a licensed psychologist employed by the Board of Parole Hearings, except as provided in subsection (g).~~Licensed psychologists employed by the Board of Parole Hearings shall prepare comprehensive risk assessments for use by hearing panels. The psychologists shall consider the current relevance of any risk factors impacting an inmate's risk of violence. The psychologists shall incorporate standardized approaches, generally accepted in the psychological community, to identify, measure, and categorize the inmate's risk of violence.
~~(1) In the case of a life inmate who has already had an initial parole consideration hearing but for whom a Comprehensive Risk Assessment has not been prepared, a Comprehensive Risk Assessment shall be performed prior to the inmate's next scheduled subsequent hearing, unless a psychological report was prepared prior to January 1, 2009.~~
~~(2) Psychological reports prepared prior to January 1, 2009 are valid for use for three years, or until used at a hearing that was conducted and completed after January 1, 2009, whichever is earlier. For purposes of this section, a completed hearing is one in which a decision on parole suitability has been rendered.~~

(b) ~~A Comprehensive Risk Assessment will be completed every five years. It will consist of both static and dynamic factors which may assist a hearing panel or the board in determining whether the inmate is suitable for parole. It may include, but is not limited to, an evaluation of the commitment offense, institutional programming, the inmate's past and present mental state, and risk factors from the prisoner's history. The Comprehensive Risk Assessment will provide the clinician's opinion, based on the available data, of the inmate's potential for future violence. Board of Parole Hearings psychologists may incorporate actuarially derived and structured professional judgment approaches to evaluate an inmate's potential for future violence.~~When preparing a risk assessment under this section for a youth offender, the psychologist shall also take into consideration the youth factors described in Penal Code section 3051, subdivision (f)(1) and their mitigating effects.

(c) ~~In the five-year period after a Comprehensive Risk Assessment has been completed, life inmates who are due for a regularly scheduled parole consideration hearing will have a Subsequent Risk Assessment completed by a licensed psychologist employed by the Board of Parole Hearings for use at the hearing. This will not apply to documentation hearings, cases coming before the board en banc, progress hearings, three-year reviews of a five-year denial, rescission hearings, postponed hearings, waived hearings or hearings scheduled pursuant to court~~

~~order, unless the board's chief psychologist or designee, in his or her discretion, determines a new assessment is appropriate under the individual circumstances of the inmate's case. The Subsequent Risk Assessment will address changes in the circumstances of the inmate's case, such as new programming, new disciplinary issues, changes in mental status, or changes in parole plans since the completion of the Comprehensive Risk Assessment. The Subsequent Risk Assessment will not include an opinion regarding the inmate's potential for future violence because it supplements, but does not replace, the Comprehensive Risk Assessment.~~A risk assessment shall not be finalized until the Chief Psychologist or a Senior Psychologist has reviewed the risk assessment to ensure that the psychologist's opinions are based upon adequate scientific foundation, and reliable and valid principles and methods have been appropriately applied to the facts of the case. A risk assessment shall become final on the date on which it is first approved by the Chief Psychologist or a Senior Psychologist.

(d) ~~The CDCR inmate appeal process does not apply to the psychological evaluations prepared by the board's psychologists. In every case where the hearing panel considers a psychological report, the inmate and his/her attorney, at the hearing, will have an opportunity to rebut or challenge the psychological report and its findings on the record. The hearing panel will determine, at its discretion, what evidentiary weight to give psychological reports.~~(1) Risk assessments shall be prepared for all initial and subsequent parole consideration hearings and all subsequent parole reconsideration hearings for inmates housed within the State of California if, on the date of the hearing, more than three years will have passed since the most recent risk assessment became final.
(2) The board may prepare a risk assessment for inmates housed outside of California.

(e) ~~If a hearing panel identifies a substantial error in a psychological report, as defined by an error which could affect the basis for the ultimate assessment of an inmate's potential for future violence, the board's chief psychologist or designee will review the report to determine if, at his or her discretion, a new report should be completed. If a new report is not completed, an explanation of the validity of the existing report shall be prepared.~~(1) If an inmate or the inmate's attorney of record believes that a risk assessment contains a factual error that materially impacts the risk assessment's conclusions regarding the inmate's risk of violence, the inmate or attorney of record may send a written objection regarding the alleged factual error to the Chief Counsel of the board, postmarked or electronically received no less than 30 calendar days before the date of the hearing.
(2) For the purposes of this section, "factual error" is defined as an explicit finding about a circumstance or event for which there is no reliable documentation or which is clearly refuted by other documentation. Factual errors do not include disagreements with clinical observations, opinions, or diagnoses or clarifications regarding statements the risk assessment attributed to the inmate.
(3) The inmate or attorney of record shall address the written objection to "Attention: Chief Counsel / Risk Assessment Objection." Electronic messages sent after board business hours or on a non-business day will be deemed received on the next business day.

(f) ~~If a hearing panel identifies at least three factual errors the board's chief psychologist or designee will review the report and determine, at his or her discretion, whether the errors invalidate the professional conclusions reached in the report, requiring a new report to be~~

~~prepared, or whether the errors may be corrected without conducting a new evaluation.~~(1) Upon receipt of a written objection to an alleged factual error in the risk assessment, or on the board's own referral, the Chief Counsel shall review the risk assessment and determine whether the risk assessment contains a factual error as alleged.
(2) Following the review, the Chief Counsel shall take one of the following actions:
(A) If the Chief Counsel determines that the risk assessment does not contain a factual error as alleged, the Chief Counsel shall overrule the objection, issue a miscellaneous decision explaining the result of the review, and promptly provide a copy of the miscellaneous decision to the inmate or attorney of record when a decision is made, but in no case less than 10 days prior to the hearing.
(B) If the Chief Counsel determines that the risk assessment contains a factual error as alleged, the Chief Counsel shall refer the matter to the Chief Psychologist.

(g) ~~Life inmates who reside in a state other than California, including those under the Interstate Compact Agreement, may not receive a Comprehensive Risk Assessment, Subsequent Risk Assessment or other psychological evaluation for the purpose of evaluating parole suitability due to restraints imposed by other state's licensing requirements, rules of professional responsibility for psychologists and variations in confidentiality laws among the states. If a psychological report is available, it may be considered by the panel for purpose of evaluating parole suitability at the panel's discretion only if it may be provided to the inmate without violating the laws and regulations of the state in which the inmate is housed.~~(1) Upon referral from the Chief Counsel, the Chief Psychologist shall review the risk assessment and opine whether the identified factual error materially impacted the risk assessment's conclusions regarding the inmate's risk of violence. The Chief Psychologist shall prepare an addendum to the risk assessment documenting his or her opinion and notify the Chief Counsel of the addendum.
(2) Upon receipt of the Chief Psychologist's addendum, the Chief Counsel shall promptly, but in no case less than 10 days prior to the hearing, take one of the following actions:
(A) If the Chief Psychologist opined that the factual error did not materially impact the risk assessment's conclusions regarding the inmate's risk of violence, the Chief Counsel shall overrule the objection, issue a miscellaneous decision explaining the result of the review, and provide a copy of the miscellaneous decision and Chief Psychologist's addendum to the inmate or attorney of record prior to the hearing.
(B) If the Chief Psychologist opined that the factual error did materially impact the risk assessment's conclusions regarding the inmate's risk of violence, the Chief Counsel shall issue a miscellaneous decision explaining the result of the review, order a new or revised risk assessment, postpone the hearing if appropriate under section 2253, subdivision (d) of these regulations, and provide a copy of the miscellaneous decision and Chief Psychologist's addendum to the inmate or attorney of record. Impacted risk assessments shall be permanently removed from the inmate's central file.

(h) ~~The provisions of this section shall not apply to medical parole hearings pursuant to Penal Code section 3550 or applications for sentence recall or resentencing pursuant to Penal Code section 1170.~~If the Chief Counsel receives a written objection to an alleged factual error in the risk assessment that is postmarked or electronically received less than 30 calendar days before the hearing, the Chief Counsel shall determine whether sufficient time exists to complete the review process described in subdivisions (f) and (g) of this section no later than 10 days prior to

the hearing. If the Chief Counsel determines that sufficient time exists, the Chief Counsel and Chief Psychologist may complete the review process in the time remaining before the hearing. If the Chief Counsel determines that insufficient time exists, the Chief Counsel may refer the objection to the hearing panel for consideration. The Chief Counsel's decision not to respond to an untimely objection is not alone good cause for either a postponement or a waiver under section 2253 of these regulations.

(i)(1) If an inmate or the inmate's attorney of record raises an objection to an alleged factual error in a risk assessment for the first time at the hearing, the hearing panel shall first determine whether the inmate has demonstrated good cause for failing to submit a written objection 30 or more calendar days before the hearing. If the inmate has not demonstrated good cause, the presiding hearing officer may overrule the objection on that basis alone. If good cause is established, the hearing panel shall consider the objection and proceed with either paragraph (3) or (4) of this subdivision.
(2) For the purpose of this subdivision, good cause is defined as an inmate's excused failure to timely object to the risk assessment earlier than he or she did.
(3) If the hearing panel determines the risk assessment may contain a factual error that materially impacts the risk assessment's conclusions regarding the inmate's risk of violence, the presiding hearing officer shall identify each alleged factual error in question and refer the risk assessment to the Chief Counsel for review under subdivision (f) of this section.
(A) If other evidence before the hearing panel is sufficient to evaluate the inmate's suitability for parole, the hearing panel shall disregard the alleged factual error, as well as any conclusions affected by the alleged factual error, and complete the hearing.
(B) If other evidence before the hearing panel is insufficient to evaluate the inmate's suitability for parole, the presiding hearing officer shall postpone the hearing under section 2253, subdivision (d) of these regulations pending the review process described in subdivisions (f) and (g) of this section.
(4) If the hearing panel determines the risk assessment does not contain a factual error that materially impacts the risk assessment's conclusions regarding the inmate's risk of violence, the presiding hearing officer shall overrule the objection and the hearing panel shall complete the hearing.

(j) Notwithstanding subdivision (i), an inmate shall have the opportunity at a hearing to object to or clarify any statements a risk assessment attributed to the inmate, or respond to any clinical observations, opinions, or diagnoses in a risk assessment.

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3051, 11190, and 11193, Penal Code; In re Lugo, (2008) 164 CalApp.4th 1522; In re Rutherford, Cal. Super. Ct., Marin County, No. SC135399A.

Prevention Tobacco Tax Act of 2016 Fund created by the California Healthcare, Research and Prevention Tobacco Tax Act of 2016. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.

SEC. 7. Severability.

If the provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this act are severable.

SEC. 8. Conflicting Measures.

(a) It is the intent of the people that in the event that this measure and another measure relating to the taxation of tobacco shall appear on the same statewide election ballot, the provisions of the other measure or measures shall not be deemed to be in conflict with this measure, and if approved by the voters, this measure shall take effect notwithstanding approval by the voters of another measure relating to the taxation of tobacco by a greater number of affirmative votes.

(b) If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting measure is later held invalid, this measure shall be self-executing and given the full force of law.

SEC. 9. Amendments.

(a) Except as hereafter provided, this act may only be amended by the electors as provided in subdivision (c) of Section 10 of Article II of the California Constitution.

(b) The Legislature may amend subdivisions (a) and (c) of Section 30130.55 and Section 30130.57 of the Revenue and Taxation Code to further the purposes of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring.

(c) The Legislature may amend subdivision (b) of Section 30130.55 of the Revenue and Taxation Code to further the purposes of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 by a statute passed in each house by roll-call vote entered in the journal, four-fifths of the membership concurring.

SEC. 10. Effective Date.

This act shall become effective as provided in subdivision (a) of Section 10 of Article II of the California Constitution; provided, however, the amendment to Section 30121 of the Revenue and Taxation Code shall become effective April 1, 2017.

PROPOSITION 57

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the California Constitution and amends sections of the Welfare and Institutions 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

The Public Safety and Rehabilitation Act of 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Public Safety and Rehabilitation Act of 2016."

SEC. 2. Purpose and Intent.

In enacting this act, it is the purpose and intent of the people of the State of California to:

1. Protect and enhance public safety.

2. Save money by reducing wasteful spending on prisons.

3. Prevent federal courts from indiscriminately releasing prisoners.

4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.

5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

SEC. 3. Section 32 is added to Article I of the California Constitution, to read:

SEC. 32. (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:

(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

SEC. 4. Judicial Transfer Process.

SEC. 4.1. Section 602 of the Welfare and Institutions Code is amended to read:

602. ~~(a)~~ Except as provided in ~~subdivision (b)~~ *Section 707*, any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

~~(b) Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction:~~

~~(1) Murder, as described in Section 187 of the Penal Code, if one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is~~

~~alleged by the prosecutor, and the prosecutor alleges that the minor personally killed the victim.~~

~~(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:~~

~~(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.~~

~~(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.~~

~~(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.~~

~~(D) Forcible lewd and lascivious acts on a child under 14 years of age, as described in subdivision (b) of Section 288 of the Penal Code.~~

~~(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.~~

~~(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

~~(G) Lewd and lascivious acts on a child under 14 years of age, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (d) of Section 1203.066 of the Penal Code.~~

SEC. 4.2. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in ~~subdivision (a) of~~ Section 602 by reason of the violation, when he or she was 16 years of age or older, of any *felony* criminal statute*,* ~~or ordinance except those listed in subdivision (b),~~ *or of an offense listed in subdivision (b) when he or she was 14 or 15 years of age, the district attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction.* ~~upon~~ *The* motion ~~of the petitioner~~ *must be* made prior to the attachment of jeopardy. *Upon such motion,* the *juvenile* court shall ~~cause~~ *order* the probation officer to ~~investigate and~~ submit a report on the behavioral patterns and social history of the minor. ~~being considered for a determination of unfitness.~~ *The report shall include any written or oral statement offered by the victim pursuant to Section 656.2.*

(2) Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court *shall decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E). If the court orders a transfer of jurisdiction, the court shall recite the basis for its decision in an order entered upon the minutes. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no plea that may have been entered already shall constitute evidence at the hearing.* ~~may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive:~~

(A) (i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B) (i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C) (i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D) (i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E) (i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

~~A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.~~

~~(2) (A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:~~

~~(i) The minor has previously been found to have committed two or more felony offenses.~~

~~(ii) The offenses upon which the prior petition or petitions were based were committed when the minor had attained 14 years of age.~~

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~~(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive.~~

~~(i) (I) The degree of criminal sophistication exhibited by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(ii) (I) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(iii) (I) The minor's previous delinquent history.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(iv) (I) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(v) (I) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subclause (I) of clauses (i) to (v), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of those criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea that may have been entered already shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

(b) Subdivision ~~(c)~~ *(a)* shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses *when he or she was 14 or 15 years of age*:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) An offense described in Section 1203.09 of the Penal Code.

(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(19) A felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(27) Kidnapping as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(29) The offense described in Section 18745 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

~~(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive.~~

~~(1) (A) The degree of criminal sophistication exhibited by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(2) (A) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(3) (A) The minor's previous delinquent history.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(4) (A) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(5) (A) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subparagraph (A) of paragraphs (1) to (5), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of those criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).~~

~~(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:~~

~~(A) The minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in the state prison for life.~~

~~(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 or 12022.53 of the Penal Code.~~

~~(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:~~

~~(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).~~

~~(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in criminal conduct by gang members.~~

~~(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one or more of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of a felony offense, when he or she was 14 years of age or older.~~

~~(A) A felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(B) A felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.~~

~~(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.~~

~~(5) For an offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(e) A report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.~~

SEC. 5. Amendment.

This act shall be broadly construed to accomplish its purposes. The provisions of Sections 4.1 and 4.2 of this act may be amended so long as such amendments are consistent with and further the intent of this act by a statute that is passed by a majority vote of the members of each house of the Legislature and signed by the Governor.

SEC. 6. Severability.

If any provision of this act, or part of this act, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 7. Conflicting Initiatives.

(a) In the event that this act and another act addressing credits and parole eligibility for state prisoners or adult court prosecution for juvenile defendants shall appear on the same statewide ballot, the provisions of the other act or acts shall be deemed to be in conflict with this act. In the event that this act receives a greater number of affirmative votes than an act deemed to be in conflict with it, the provisions of this act shall prevail in their entirety, and the other act or acts shall be null and void.

(b) If this act is approved by voters but superseded by law by any other conflicting act approved by voters at the same election, and the conflicting ballot act is later held invalid, this act shall be self-executing and given full force and effect.

SEC. 8. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in any trial court, on appeal, or on discretionary review by the Supreme Court of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 9. Liberal Construction.

This act shall be liberally construed to effectuate its purposes.

PROPOSITION 58

This law proposed by Senate Bill 1174 of the 2013–2014 Regular Session (Chapter 753, Statutes of 2014) is submitted to the people in accordance with Section 10 of Article II of the California Constitution.

This proposed law amends and repeals sections of the Education Code; therefore, 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. This measure shall be known, and may be cited, as the "California Ed.G.E. Initiative" or "California Education for a Global Economy Initiative."

SEC. 2. Section 300 of the Education Code is amended to read:

300. The ~~People~~ *people* of California find and declare as follows:

(a) Whereas, The English language is the national public language of the United States of America and of the State of California, is spoken by the vast majority of California residents, and is also the leading world language for ~~science, technology, and international business,~~ *science and technology,* thereby being ~~the~~ *an important* language of economic opportunity; and

(b) Whereas, ~~Immigrant~~*All* parents are eager to have their children ~~acquire a good knowledge of English, thereby allowing~~ *master the English language and obtain a high-quality education, thereby preparing* them to fully participate in the American Dream of economic and social advancement; and

(c) Whereas, California is home to thousands of multinational businesses that must communicate daily with associates around the world; and

(d) Whereas, California employers across all sectors, both public and private, are actively recruiting multilingual employees because of their ability to forge stronger bonds with customers, clients, and business partners; and

(e) Whereas, Multilingual skills are necessary for our country's national security and essential to conducting diplomacy and international programs; and

(f) Whereas, California has a natural reserve of the world's largest languages, including English, Mandarin, and Spanish, which are critical to the state's economic trade and diplomatic efforts; and

(g) Whereas, California has the unique opportunity to provide all parents with the choice to have their children educated to high standards in English and one or more additional languages, including Native American languages, thereby increasing pupils' access to higher education and careers of their choice; and

~~(c)~~ *(h)* Whereas, The government and the public schools of California have a moral obligation and a constitutional duty to provide all of California's children, regardless of their ethnicity or national ~~origins,~~ *origin,* with the skills necessary to become productive members of our society, and of these skills, literacy in the English language is among the most important; and

~~(d)~~ *(i)* Whereas, The ~~public schools of California currently do a poor job of educating immigrant children, wasting financial resources on costly experimental language programs whose failure over the past two decades is demonstrated by the current high drop-out rates and low English literacy levels of many immigrant children,~~ *California Legislature approved, and the Governor signed, a historic school funding reform that restructured public education funding in a more equitable manner, directs increased resources to improve English language acquisition, and provides local control to school districts, county offices of education, and schools on how to spend funding through the local control funding formula and local control and accountability plans;* and

(j) Whereas, Parents now have the opportunity to participate in building innovative new programs that will offer pupils greater opportunities to acquire 21st century skills, such as multilingualism; and

(k) Whereas, All parents will have a choice and voice to demand the best education for their children, including access to language programs that will improve their children's preparation for college and careers, and allow them to be more competitive in a global economy; and

(l) Whereas, Existing law places constraints on teachers and schools, which have deprived many pupils of opportunities to develop multilingual skills; and

~~(e)~~ *(m)* Whereas, ~~Young immigrant children can easily acquire full fluency in a new language, such as English, if they are heavily exposed to that language in the classroom at an early age.~~ *A large body of research has demonstrated the cognitive, economic, and long-term academic benefits of multilingualism and multiliteracy.*

~~(f)~~ *(n)* Therefore, It is resolved that: *amendments to, and the repeal of, certain provisions of this chapter at the November 2016 statewide general election will advance the goal of voters to ensure that* all children in California public schools shall ~~be taught English as rapidly and effectively as possible.~~ *receive the highest quality education, master the English language, and access high-quality, innovative, and research-based language programs that provide the California Ed.G.E. (California Education for a Global Economy).*

SEC. 3. Section 305 of the Education Code is amended to read: