

Legal Concerns in Prop. 6 and 9

PROP 6

Prop. 6 provision	Discussion	Legal issue
<p>Prop. 6 adds 30 new penalty increases to state law.</p>	<p>Last year, the Little Hoover Commission, an independent state agency, condemned the state’s sentencing system as complex and confusing: “California has created a haphazard jumble of sentencing laws enacted incrementally over three dozen years.” The Governor has specifically called for an end to “arbitrary sentencing” and the launch of an independent sentencing commission to develop an objective risk assessment tool and set sentences accordingly.</p> <p>Researchers from the Stanford Criminal Justice Center count 80 increases in criminal penalties since determinate sentencing was conceived in 1977. Proposition 6, in one fell swoop, will add at least 30 more, according to the Attorney General.</p> <p>The majority of penalty increases target non-violent offenders, or people who were least responsible for the commission of a particular offense. Only one increases the penalties for an individual who inflicts physical harm upon another person. How do you expect to decrease violence by punishing the nonviolent?</p>	<p>Arbitrary sentencing</p>
<p>Treats juvenile adjudications the same as criminal convictions</p>	<p>Amendments to PC 186.22 would include juvenile adjudications in addition to criminal convictions for the purposes of increasing prison sentences.</p> <p>Last year, the Sixth District Appellate court held in <i>People v. Nguyen</i> that a juvenile’s priors cannot be used as strikes because juveniles are not afforded a jury trial.</p>	<p>Sixth Amendment right to trial by jury; Fourteenth Amendment right to due process of the law</p>
<p>Punishes individuals if</p>	<p>Amendment to PC 186.22.</p>	<p>Collective punishment</p>

<p>property is used for gang activity, even without their knowledge.</p>	<p>If approved, homeowners, building owners, renters, and others will be held financially liable or even evicted for the acts of others.</p>	
<p>Individuals who provide contraband to an inmate who later uses that item in a felony are subject to same penalties as the inmate.</p>	<p>Amendment to PC 45059(b). Currently, under California law, the State must show intent to commit the charged offense in order to find aiders and abettors culpable as principals to the offense. But this clause does not require proof of intent.</p>	<p>Violation of 14th amendment due process rights. Creates full liability for people who had no intent to facilitate the particular criminal purpose of the perpetrator.</p>
<p>Anyone who “recruits” another to participate in a gang will be punished as a principal for any subsequent felony the recruited subject commits within a year of the last act of recruitment.</p>	<p>This amendment to PC 186.26 would punish individuals for offenses committed by the subjects of their recruitment. California already punishes individuals for the act of recruiting individuals to participate in gang related criminal offenses. Under California’s aiding and abetting laws, the aider/abettor must be shown to have intended the charged offense in order to held liable as a principal.</p> <p>Under this proposed amendment, individuals would be charged for offenses they neither intended nor aided or abetted in any manner. The state would not be required to prove that these individuals intended or participated in the commission of the crime. This would lead to individuals being held strictly liable for crimes that require a specific intent, such as murder or theft.</p> <p>An individual could already be incarcerated for another crime and be punished for a murder they could not possibly have aided, while the actual perpetrator of the act could go unpunished.</p> <p>Criminal punishments generally require a <i>mens rea</i> and degree of culpability. Holding “recruiters” strictly liable for the acts of individuals to whom they exercise no power or control over violates both procedural and substantive due process.</p>	<p>Violation of 14th amendment due process rights. Creates full liability for people who had no intent to facilitate the particular criminal purpose of the perpetrator.</p>

<p>Prop. 6 makes it easier to impose a gang injunction upon a loosely defined group.</p>	<p>Stipulates that an injunction can be served to the gang in the name by which the gang is known, and only a person “designated” by the gang or, alternatively, three of its members, have to be notified.</p> <p>It also stiffens the penalties for violating the injunction. “To prevent rulings against gang injunctions in the name of constitutionality,” current practice follows that city attorneys “name individually every gang member in an injunction, as well as the specific practices the injunction prohibits.” (ACLU)</p> <p>Gang members would be served under Prop 6 in the same manner as a corporation. But gang membership, unlike a corporate status, is a subjective label. While corporations are able to account for all of their employees, gangs cannot be expected to operate in the same manner. There is no one designated “headquarters” for gangs, nor is there a legitimate roster of gang members.</p> <p>Service of process is required to provide notice to the individual served that a suit has been filed and to afford her or him the opportunity to respond as a matter of right. By allowing injunction to apply to individuals not specifically named in the court injunction, Prop 6 would expose the state to strong court challenges.</p>	<p>Violation of 14th amendment due process rights.</p> <p>By allowing injunction to apply to individuals not specifically named in the court injunction, Prop 6 would expose the state to strong court challenges.</p>
<p>Expands definition of an “Unavailable Witness” to include a declarant who is physically present in the courtroom but refuses to testify despite a court order to do so.</p>	<p>Proposed amendment to Section 240 of the Evidence Code. In <i>Crawford v. Washington</i> (541 U.S. 36, 2004), the Supreme Court of the United States held that where testimonial evidence was at issue, the Sixth Amendment demands unavailability of the declarant and a prior opportunity for cross examination. This amendment would 1) allow hearsay statements to be entered into evidence without the opportunity to cross-examine the witness, despite the declarant’s physical presence in the courtroom and a court order to testify, and 2) circumvent the courts’ ability to subpoena witnesses to testify.</p>	<p>Violates the Sixth Amendment’s Confrontation Clause, or the defendant’s right to confront her witnesses.</p>
<p>Admits hearsay whenever</p>	<p>New Evidence Code 1390(a) allows the introduction of hearsay</p>	<p>Violates the Sixth Amendment’s</p>

<p>the defendant's actions "cause" the unavailability of the witness.</p>	<p>if the statement is offered against someone who engaged or acquiesced in criminal conduct that caused the unavailability of the witness. This provision doesn't require proof that the defendant's criminal action was intended to prevent the witness from testifying.</p> <p>Therefore, it patently contradicts the United States Supreme Court in <i>Giles v. California (2008)</i>. Scalia wrote for the majority that a hearsay statement from an unavailable witness is only admissible if the accused had specifically worked to keep the witness off the stand.</p>	<p>Confrontation Clause, or the defendant's right to confront her witnesses.</p>
<p>Denies bail to individuals who have committed certain crimes (including all allegedly "gang-related" felonies) based solely on their immigration status.</p>	<p>Proposed amendment to PC 667.21 enters the provenance of federal immigration law by punishing individuals with pre-trial detention exclusively because of their citizenship status.</p> <p>The Supreme Court has held that a court may not impose pre-trial conditions that punish criminal defendants for past acts without regard to whether an individual poses a flight risk.</p> <p>It is unreasonable to expect that the sheriff should be able to make a conclusive determination of a person's undocumented status before bail is set. Most people today are able to seek bail release as soon as charges are filed, pursuant to the county's bail schedule. Who is labeled a "gang member" is also subjective determination. But guilty or not, those who are assumed to be gang members and assumed to be illegal immigrants will not have the right to bail like every other defendant. Any wrongful determination the sheriff does make is subject to a costly legal challenge.</p> <p>Prop. 6 endorses a legal system based on stereotypes, rather than fair, neutral practices that honestly assess the risk an individual poses to public safety in setting bail.</p>	<p>Violates Article VI Supremacy Clause and Eighth Amendment protections against excessive bail.</p>
<p>Obligates county sheriffs</p>	<p>The language of a proposed amendment to PC 667.21</p>	<p>Violates Article VI Supremacy Clause,</p>

<p>to record the status of every undocumented person charged with a felony.</p>	<p>requiring sheriffs to verify legal status of every person they charge with a felony is comparable to a provision advanced by the 1994 California ballot initiative, Proposition 187. It was later declared unconstitutional for overstepping federal immigration law.</p> <p>Prop. 6's clause doesn't even require, as Prop. 187 had, that individuals be notified when they are suspected of residing illegally within the US. ICE holds, then, risk being placed on US citizens without their knowledge (as was the case with several individuals at San Quentin recently).</p>	<p>Fifth Amendment right against self incrimination</p>
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Prop. 9

Name	Description	Legal Issue
<p>Limits rights of parolees with respect to revocation hearings.</p>	<p>New Section PC 3044 increases the maximum waiting period before probable cause and revocation hearing, allows for hearsay evidence but denies right to confront witnesses, withdraws the right to legal counsel for all parolees, and stipulates that rights of parolees are limited to the few mentioned in Prop. 9.</p> <p>These provisions challenge parolee due process rights established under a 2004 federal court order, Valdivia v. Davis, and promises a return to the pre-Valdivia parole revocation system found to have violated procedural due process guaranteed by Constitution.</p> <p>Rights eliminated by Prop. 6 include: the right for counsel to present witnesses and evidence; summary of charge presented to parolee within 3 days of hold; Spanish translation of all forms where necessary.</p>	<p>Violates 2004 federal court order, Valdivia v. Davis.</p>
<p>Eliminates option of responsible release of any inmate (including non-</p>	<p>California prisons operate at almost twice designed capacity. Half of California prison admissions in 2006 were for parole violations, and half of parolees return to prison on technical</p>	<p>Could conflict with pending federal court decision.</p>

<p>violent inmates) in prison or jail to relieve overcrowding.</p>	<p>violations. Twenty California counties already face federally-imposed inmate population caps, and release inmates early. This amendment to Section 28 of the Constitution (3/4 vote to change) is also likely to conflict with three-judge panel ruling on the Plata and Coleman cases this November. The judges will decide whether current prison conditions are unconstitutional and will look at setting a population cap on the system.</p>	
<p>Lengthens standard wait between parole hearings to 15 years.</p>	<p>Amends section 3041.5 of Penal code to decrease the frequency of parole hearings for people serving indeterminate sentences (approximately one fifth of the entire prison population). While today hearings typically occur annually, Prop. 9 sets strict standards for the board to shorten the denial period to less than 15 years—effectively tripling the sentence of some inmates.</p> <p>In February, a California Superior Court judge admonished the Board of Parole Hearings for failing to hear thousands of eligible parole cases. The judge ordered the court to clear the backlog by June 2009. Prop. 9 will enable the board to hear even fewer cases with impunity.</p>	<p>Undermines California Superior Court order, re: parole hearings.</p>
<p>Alters procedures for parole hearing.</p>	<p>Amends PC 3041.5 to expand the number of people that victims may bring to the hearing: any family members, plus two adults who need not have any relationship to the victim. All are entitled to testify. Where today victim statements must be limited to 15 minutes and speak exclusively to the impact of the crime on the victim, under Prop. 9, victims and their guests are entitled to speak, uninterrupted, on a range of topics they may have little knowledge of. Neither the prisoner nor the prisoner's attorney is entitled to ask questions of the victim or otherwise challenge their testimony.</p> <p>These changes, which add little to a fair determination of the inmate's present fitness for release, go against the spirit of the California Supreme Court's ruling in <i>Lawrence</i> (August 2008) that decisions to grant parole should be based on whether the inmate continues to pose a danger to public safety and should</p>	<p>Compromises California Supreme Court ruling on the parole process (<i>Lawrence</i>)</p>

	consider the evidence of the inmate's rehabilitation.	
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