



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** MEMOS FROM OFFICE OF THE  
CITY ATTORNEY

**DATE:** October 19, 2009

As background for the discussion on the Sunshine Reform Task Force recommendations on Law Enforcement Records, attached are two (2) memos issued by the Office of the City Attorney some time ago. The first memo is addressed to the Sunshine Reform Task Force and is dated January 31, 2008. The second memo is addressed to the Rules and Open Government Committee and is dated January 15, 2009.

RICHARD DOYLE  
City Attorney

By:   
LISA HERRICK  
Sr. Deputy City Attorney



## SOURCES

To prepare this response, we reviewed the District Attorney's Position Paper dated December 4, 2007, James Chadwick's Comments on the Position of the Santa Clara District Attorney dated December 10, 2007, the letter dated January 25, 2008, from Mark Schlosberg, Police Practices Policy Director, ACLU of Northern California and conducted our own extensive research as cited below.

## LEGAL ANALYSIS

### **A. BACKGROUND**

#### **1. Constitutional Provision About Local Self-Governance**

The City of San Jose is a charter city and, accordingly, has broad regulatory powers with respect to municipal affairs. The California Constitution sets forth the grant of powers to charter cities as follows:

[Charter cities] may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City Charters adopted pursuant to this Constitution shall supersede any existing Charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

California Constitution, Article XI, Section 5.

#### **2. San Jose City Charter Establishes A Police Department**

The San Jose City Charter, Article VIII, Section 800 provides: "Subject to the limitations hereinafter specified in this section, the Council shall have the following powers and duties: (a) The Council, in its discretion, may at any time establish such City offices, departments and agencies, in addition to those established by this Charter, as it may desire; and shall prescribe the respective functions, powers and duties of those departments which are established by Section 807 of this Charter. . . ."

Section 802 of the San Jose City Charter provides that "By action not inconsistent with other provisions of this Charter, the Council shall provide for the organization, conduct and operation of the several offices, departments and agencies of the City." Section 807 of the San Jose City Charter establishes the Police Department.

#### **3. Preemption Principles**

The California Supreme Court in *O'Connell v. City of Stockton* (2007) 41 Cal.4<sup>th</sup> 1061, recently restated the correct analysis for determining whether State law preempts a charter city ordinance. The first step in determining whether a local ordinance is

preempted by State law is to determine whether there is, in fact, any conflict between the State law and the local provision. *O'Connell*, 41 Cal.4<sup>th</sup> at 1067. This is so because Article XI, Section 7 of the California Constitution states that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [state] laws." *Id.* Consequently, if local legislation conflicts with state law, it is preempted and void. *Id.* It should be kept in mind, however, that with respect to "municipal affairs," laws enacted by charter cities prevail over all state laws, including conflicting state laws. *Comm. of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 505. The only exception to this general rule is when State law addresses matters of statewide concern. *Id.*

A conflict exists if the local legislation "*duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.*" *O'Connell*, 41 Cal.4<sup>th</sup> at 1067 (citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4<sup>th</sup> 893, 897, and *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4<sup>th</sup> 1239, 1251)(italics in the original). The *O'Connell* court explained that a local ordinance duplicates State law when it is "coextensive" with it, contradicts State law when it is "inimical to or cannot be reconciled" with it or enters a field fully occupied by State law when the Legislature either "expressly or by implication manifest[s]" its intent to occupy the legal area. *Id.* at 1067-68.

The Legislature occupies an area of law by implication when:

"(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the" locality.

*Id.* at 1068.

It should also be noted that when a local government regulates in an area over which it traditionally has exercised control, California courts presume that such regulation is not preempted by State statute, unless there is a clear indication to the contrary. *Id.* at 1068.

In *Johnson v. Bradley* (1992) 4 Cal.4th 389, the California Supreme Court stated:

To the extent difficult choices between competing claims of municipal and state governments can be forestalled in the sensitive area of constitutional law, they ought to be; courts can avoid making such unnecessary choices

by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other.

*Id.* at 399.

Next, in case of an actual conflict, and where the matter implicates a municipal affair, the court's inquiry under the California Constitution focuses on whether the conflicting State law qualifies as a matter of statewide concern. *Id.* If the State statute does not qualify as a matter of statewide concern, the inquiry ends and the city regulation is not preempted. *Id.* If the State statute qualifies as a statewide concern, the court then must consider whether the State statute is both reasonably related to the resolution of that concern, and narrowly tailored to limit incursion into legitimate municipal interests. *Id.* If it is not, then the local law is not preempted. *Id.*

In *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4<sup>th</sup> 1139, the Supreme Court explained that in certain circumstances, there is a presumption against preemption:

We have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.' 'The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption.'

*Id.* at 1149 (citations omitted).

#### **4. The California Public Records Act – Generally**

The right to inspect public records is regulated by the California Public Records Act (CPRA), enacted as Government Code Sections 6250 through 6278.48.

The Sixth District Court of Appeals explained the purpose of CPRA as follows: "The CPRA 'was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public entities.' 'The CPRA embodies a strong policy in favor of disclosure of public records . . . .' Public records are broadly defined." *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4<sup>th</sup> 1356, 1407-1408 (citations omitted).

Despite the strong legislative policy favoring access, "the public's right to disclosure of public records is not absolute. In California, the Act includes two exceptions to the general policy of disclosure of public records: (1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the 'catchall exceptions' of section 6255, which allows a government

agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure." But "unless exempted, all public records may be examined by any member of the public, often the press, but conceivably any person with no greater interest than idle curiosity."

*Id.* at 1408.

To the many statutory exceptions the courts have added other exceptions that certain communications and documents must be treated as confidential, such as "the files in the offices of those charged with the execution of the laws relating to the apprehension, prosecution, and punishment of criminals." 55 Cal.Jur.3d, Records and Recording Laws, sec. 17 (2008).<sup>1</sup>

### 5. The CPRA on Law Enforcement Records

Generally, "[r]ecords of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, . . . any local police agency. . ." are exempt from disclosure. Government Code Section 6254(f). But "[n]otwithstanding any other provision, state and local law enforcement agencies must make public certain statutorily enumerated information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation." Government Code Section 6254(f).

Moreover, the provisions of the CPRA authorize disclosure only of contemporaneous information relating to persons currently within the criminal justice system. According to the court in *County of Los Angeles v. Sup. Ct. (Kusar)* (1993) 18 Cal.App.4<sup>th</sup> 588, section 6254(f) describes certain information that must be released:

This information is described in terms which strongly suggest that contemporaneous information is intended. The disclosed information must include (1) the "*current address*" of an arrestee, (2) the time and date of booking, (3) the location where the arrestee is then *currently* being held, or, if not in custody, the time and manner of release, (4) the amount of bail set, (5) all charges on which the arrestee is *being held* and (6) any *outstanding* warrants or parole violations. This information is patently the type of information which would be relevant to current and contemporaneous police activity.

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<sup>1</sup> Exemptions created by case law or Attorney General opinions include: (1) records of the state court system, including records of the jury commissioner, (2) information communicated to public officers in confidence, on the theory that precluding officers from disclosing such information protects public interests that may be otherwise injured, (3) copies of an arrest or complaint report requested by one who has provided information contained in the report, although certain information contained in the report must be made public. Laurie L. Levenson, California Criminal Procedure, Ch. 17:6 (2008).

*Id.* at 595 (italics in original).

In addition to reviewing the actual language of section 6254(f) in effect at that time, the *County of Los Angeles* court reviewed its legislative history. Assembly Bill No. 909 of the 1981-1982 Regular Session sought to amend section 6254(f). The history of AB 909 "reflects that its purpose was to modify the then-existing statutory limitations on the disclosure of specified information in criminal complaints or law enforcement investigations. Up until that time such disclosure was restricted to the parties involved, insurance carriers or any person harmed during a particular incident." *Id.* at 596. In explaining the bill, the report of the Senate Committee on the Judiciary explained that "[t]his bill would make express what proponents [the California Newspaper Publishers Association] maintain is implied by common law tradition and the scope of the Public Records Act – that incident logs and booking sheets recording the daily investigatory and arrest activity of local police departments should be open in public inspection." *Id.* at 598.

As it turns out, "the Governor vetoed AB 909 as too broad. He invited both the press and law enforcement officials to work together on mutually acceptable legislation that serves both the public safety and right to know. Assembly Bill No. 277 (AB 277), introduced in 1982 was the result and it was ultimately passed. . . ." *Id.*

The *County of Los Angeles* court concluded:

It seems obvious that the legislative history of AB 909 is directly relevant to our examination of [section 6254(f)] since AB 277 was the same bill except for modifications requested by the Governor's veto message on AB 909. Indeed, the legislative history of AB 277 itself is fairly modest, reflecting as it does that it is the compromise response to the veto of AB 909.

...

We believe that this 1982 legislation demonstrated a legislative intent only to continue the common law tradition of contemporaneous disclosure of individualized arrest information in order to prevent secret arrests and to mandate the continued disclosure of customary and basic law enforcement information to the press.

*Id.*

## **6. The CPRA on Providing Greater Access to Public Records**

As discussed above, "[a] local ordinance enters a field fully occupied by state law in either of two situations—when the Legislature "expressly manifest[s]" its intent to occupy the legal area or when the Legislature "impliedly" occupies the field. *Sherwin-Williams, supra*, 4 Cal.4<sup>th</sup> at p. 898.

The Legislature has not impliedly fully occupied the field of access to public records because it has expressly allowed local agencies to provide greater disclosure to the public than CPRA: "Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law." Government Code Section 6254. The CPRA also provides that "[e]xcept as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter." Government Code Section 6253(e).

In *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4<sup>th</sup> 1139, the Supreme Court stated that "[p]reemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." *Id.* at 1157 (citation omitted).

## **B. THE DISTRICT ATTORNEY'S CONCLUSION ABOUT PREEMPTION IS INCORRECT**

The District Attorney concludes that the Sunshine Reform Task Force's (SRTF) recommendation violates the preemption and home rule doctrines. The discussion relies on an appellate court case, *Rivero v. Superior Court* (1997) 54 Cal.App.4<sup>th</sup> 1048.

First, the District Attorney states mistakenly that the California Constitution permits charter cities to regulate only matters of local concern. The *Rivero* case states the well-established principle that "local governments (whether chartered or not) do not lack the power, nor are they forbidden by the Constitution, to legislate upon matters which are not of a local nature . . . ." *Rivero v. Sup. Ct.* (1997) 54 Cal.App.4<sup>th</sup> 1048, 1054.

Second, the District Attorney does not identify which State statute preempts the SRTF's recommendations. Preemption requires a conflict with a State statute and none is indicated in the District Attorney's analysis.

Finally, the finding of preemption in the *Rivero* case relied upon by the District Attorney does not apply here because the State statute discussed in *Rivero* only pertains to the authority of counties' boards of supervisors. The State statute has no relevance to a Charter city.

The First District Court of Appeals in *Rivero v. Superior Court* (1997) 54 Cal.App.4<sup>th</sup> 1048, considered a provision of the San Francisco Sunshine Ordinance that required disclosure of certain criminal investigation records of the San Francisco District Attorney's Office after the court or the prosecution ended "the prospect of any enforcement action." *Id.* at 1053. The California Public Records Act (CPRA), however, exempts those records from the normal disclosure requirements. And the CPRA exemption has no temporal limit (even though it mandates disclosure of certain information from the investigation files to certain specific persons). *Id.* at 1052. In *Rivero*, a citizen requested a complete investigation file from the San Francisco

District Attorney's Office based on the CPRA and the San Francisco Sunshine Ordinance. Even though the investigation had been closed, the San Francisco District Attorney's Office denied the request, invoking a non-disclosure exemption and asserting that the exemption continued after conclusion of the investigation. *Id.* at 1051. The citizen sued in State court and the court issued summary judgment in favor of the San Francisco District Attorney. The *Rivero* court held that neither the CPRA nor the San Francisco Sunshine Ordinance compels the San Francisco District Attorney to disclose the closed criminal investigation records. *Id.* at 1050.

First, the *Rivero* court determined that the ordinance applies to departments of the City and County of San Francisco. *Id.* at 1055. The *Rivero* court found that the Office of the San Francisco District Attorney is a "department" of the City and County of San Francisco and, as a result, the San Francisco Sunshine Ordinance by its terms applies to the District Attorney's Office. *Id.* at 1055-56.

It should be noted that for this analysis, the relevant provisions of the SRTF's recommendations do not contain terms that purport to apply to the Santa Clara County District Attorney's Office. Unlike the *Rivero* case, the Office of the Santa Clara County District Attorney is not a department of the City of San Jose.

Next, the *Rivero* court considered whether the ordinance applied to records of criminal investigations in the District Attorney's Office. The court determined that the key question was: "[d]oes compelled disclosure of closed criminal investigation files obstruct the investigatory function of the district attorney's office, thus contravening [Government Code] section 25303?" *Id.* at 1058. Government Code Section 25303 prohibits a County Board of Supervisors from interfering with the investigative or prosecutorial functions of a district attorney. The *Rivero* court thus considered whether there is a conflict between the Sunshine Ordinance of the City and County of San Francisco and a State statute that regulates the government of counties.

This is significant because neither the *Rivero* opinion nor the District Attorney's December 4, 2007 memorandum identifies a State statute which pertains to cities. Consequently, the finding of preemption in the *Rivero* case has no relevance to the preemption discussion of the SRTF's recommendations on law enforcement reports.

Although the District Attorney argues that investigations by police departments are a statewide concern just like investigations by district attorneys, the memorandum skips the key step in preemption analysis – there needs to be a conflict between a local ordinance and a State statute. Here, there is no conflicting State statute. Moreover, the District Attorney's argument disregards the constitutional right of a Charter city to establish rules that govern its police department.

The *Rivero* court stated that Government Code Section 25303 "affirms prosecutorial independence and states that the [county] board [of supervisors] shall not 'obstruct the investigative and prosecutorial function of the district attorney of a county.'" *Rivero*, 54 Cal.App.4<sup>th</sup> at 1056-57 (citing Government Code Section 25303). The *Rivero* court

found that Section 25303 prohibits the San Francisco's Board of Supervisors from interfering with the San Francisco District Attorney's investigative function. The court also found that the ordinance that the Board enacted in fact interferes with the San Francisco District Attorney's functions because it compels disclosure of closed investigation files. *Id.* at 1058. The *Rivero* court reasoned that such compelled disclosure would potentially impede evidence gathering because witnesses, including anonymous sources, would be deterred from coming forward if there is no assurance of confidentiality. *Id.* at 1058-59.

After an abbreviated preemption analysis, the *Rivero* court concluded that the San Francisco ordinance conflicts with Government Code Section 25303. *Rivero*, 54 Cal.App.4<sup>th</sup> at 1059-60. The *Rivero* court held that even though the California Public Records Act allows local entities to enact legislation to provide greater access to their records, and even though the CPRA allows a district attorney to voluntarily disclose the requested investigation records, the San Francisco Board of Supervisors may not compel such disclosure by its Sunshine Ordinance because another State statute, Government Code Section 25303, prohibits interference with the investigative function of district attorneys. *Rivero*, 54 Cal.App.4<sup>th</sup> at 1059-60.

This is not the case here. San Francisco's situation is different from the City of San Jose because San Francisco is both a city and county and is subject to state laws regulating county government. Not so with regard to the City of San Jose.

In sum, the District Attorney's memorandum does not identify any State statute that preempts the SRTF's recommendations on law enforcement records.

**C. THE SRTF'S RECOMMENDATIONS THAT REQUIRE RELEASE OF SOURCE REPORTS OR OTHER INFORMATION THAT MAY BE USED TO COMPILE CRIMINAL HISTORY INFORMATION ARE PRECLUDED BY THE CALIFORNIA CONSTITUTION AND OTHER CALIFORNIA LAWS THAT PROTECT AN INDIVIDUAL'S RIGHT OF PRIVACY**

Article 1, Section 1 of the California Constitution and various California statutes protect the privacy rights of victims, witnesses, arrestees, defendants pending trial, convicted defendants and acquitted defendants. The District Attorney's memorandum discusses some of the cases interpreting the California laws that protect privacy, and we agree with that analysis. For purposes of this memo, however, we focus only on the legislative scheme that protects disclosure of local summary criminal history information. Thus, our analysis below on the right of privacy is not exhaustive.

Penal Code Sections 13300 – 13305 identify those agencies and persons to whom "local summary criminal history information" may be released. Generally, courts, peace officers and other designated persons and agencies are entitled to the information when needed in the course of their duties. Other specified agencies or officers may receive local summary criminal history information on a showing of a compelling need.

The purpose of Sections 13300 – 13305 “is to avoid unwarranted public intrusion into matters personal and sensitive in nature, thereby protecting and promoting the right of privacy guaranteed in the California Constitution.” 89 Ops. Cal. Atty. Gen. 204, 205 (2006) (citations omitted). Section 13302 provides that “[a]ny employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.” But Sections 13300(h) and 13305 do permit dissemination of “statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.”

The California Attorney General carefully analyzed and compared the requirements of the CPRA and Penal Code Sections 13300 – 13305 in light of the voters’ approval of Proposition 59. The Attorney General concluded that:

... nothing in subdivision (f) of section 6254 requires that the records themselves be disclosed, and nothing suggests a duty to reveal information contained in historical compilations, such as summary criminal history information, or to make such historical records available for inspection.

Even as to current criminal information that may otherwise be found in public records, local agencies may not make general or comprehensive compilations available to members of the public, whether or not the records are susceptible of “specialized indexing” or electronic search functions.

...

Such disclosure of extensive data. . . regardless of the source of the data, would have the potential of undermining the privacy protections of Penal Code sections 13300 – 13305.

89 Ops. Cal. Atty. Gen. 204, 212-213 (2006).

In sum, Penal Code Sections 13300 – 13305 protect privacy interests by limiting disclosure of source records or information from which one could derive summary criminal history information.

**D. SOME OF THE SRTF’S RECOMMENDATIONS ARE CONTRADICTORY TO THE CPRA**

As to the names of witnesses, Section 5.1.1.030.H of the SRTF’s recommendation prohibits disclosure (“the following information must be removed”) to anyone (it permits disclosure only if the witness agrees). This contradicts the State statute in that Section 6254(f) of the CPRA requires disclosure (“local law enforcement agencies shall disclose”) of the names of witnesses (other than confidential informants) to certain specified persons, such as the victims or their representatives, insurance carriers and

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persons suffering bodily injury or property damage as a result of certain incidents. It does not appear that these two provisions can be reconciled.

As to the addresses of witnesses, Section 5.1.1.030.C prohibits disclosure to anyone. On the other hand, Section 6254(f) requires disclosure to the same specified persons listed above. This is another clear contradiction; the above are just examples and this list is not exhaustive. The Task Force should consider the minimum requirements of the CPRA, which, in the above examples require broader disclosure than the current SRTF recommendations, as it finalizes its recommendations on law enforcement records.

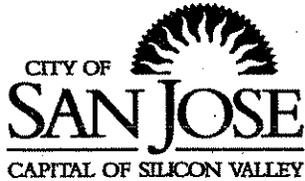
### CONCLUSION

The District Attorney has not identified a California statute that preempts the Sunshine Reform Task Force's recommendations about law enforcement reports. But we do believe that the California Constitution and other California laws protect individual rights of privacy and thus prohibit the City of San Jose from providing access to law enforcement reports from which criminal history information can be derived. Finally, the Task Force should review the minimum requirements of the CPRA and ensure that its recommendations do not restrict access to contemporaneous individualized arrest information.

RICHARD DOYLE  
City Attorney

By   
Lisa Herrick  
Senior Deputy City Attorney

cc: JoAnne McCracken, Supervising Deputy District Attorney  
Captain Gary Kirby, San Jose Police Department  
Ed Davis, Counsel to the Sunshine Reform Task Force  
James Chadwick, Counsel to the San Jose Mercury News  
Mark Schlosberg, Police Practices Policy Director, ACLU of Northern California



# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE

**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** CITY ATTORNEY'S RESPONSE TO REFERRAL DATED JANUARY 14, 2009 FROM RULES AND OPEN GOVERNMENT COMMITTEE

**DATE:** January 15, 2009

## QUESTION PRESENTED

Does Proposition 9 prohibit the City from allowing greater access to information contained in police records?

## SHORT ANSWER

No.

## BACKGROUND

The Rules and Open Government Committee has been reviewing and discussing the Sunshine Reform Task Force's Phase II Report and Recommendations. One of the Task Force's recommendations in Phase II relates to police reports. On October 14, 2008, the Rules Committee held a special meeting to discuss the recommendations on police reports and made some referrals to staff. On October 29, 2008, the Rules Committee approved a work plan for staff which includes the referrals for additional information requested by the Committee as well as some other questions posed by the Chair of the Task Force's Public Records Subcommittee.

On January 7, 2009, the Rules Committee approved a schedule of presentations about the rest of the Phase II recommendations; the discussion on police records is scheduled for January 21, 2009.

On January 14, 2009, the Rules Committee raised a question about Proposition 9, a State initiative passed by the voters of California on November 4, 2008. The Committee has asked the Attorney's Office to review the text of Proposition 9 and advise the Committee about whether the City is prohibited from allowing greater access to information contained in police records. A copy of the text of Proposition 9 is attached.

**ANALYSIS**

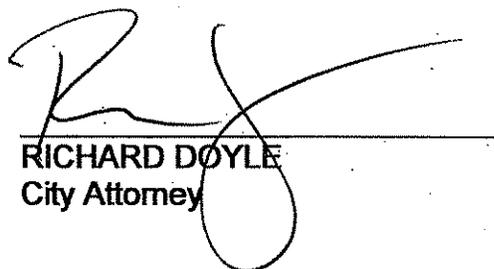
On November 4, 2008, California voters approved Proposition 9, also known as the Victims' Bill of Rights Act of 2008: Marsy's Law. The initiative added to and amended sections the California Constitution and the California Penal Code relating to the rights of victims of crime.

Among other things, the Constitution is amended to state that "a victim shall be entitled to the following rights: ... (4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law."

The City may adopt legislation that expands access to information contained in police records as long it does not require disclosure of confidential information of victims, or any other information protected by state or federal statute. This conclusion is consistent with the California Public Records Act, which specifically permits a public agency to open its administrative records and allow for faster, more efficient or greater access to records unless disclosure is otherwise prohibited by law.

**CONCLUSION**

Proposition 9 does not prohibit the City from allowing greater access to information contained in police records. In fact, the California Public Records Act specifically permits a public agency to open its administrative records and allow for faster, more efficient or greater access to records unless disclosure is otherwise prohibited by law.



RICHARD DOYLE  
City Attorney

**VICTIMS' BILL OF RIGHTS ACT OF 2008: MARSY'S LAW**

December 21, 2007

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS****TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:**

We, the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose additions and amendments to the California Constitution and to the California Penal Code, relating to the rights of victims of crime, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed constitutional and statutory additions and amendments (full title and text of the measure) read as follows:

(Additions to text are denoted in *italics* and deletions are denoted in ~~strikeout type~~)

**SECTION 1. TITLE**

This act shall be known, and may be cited as, the "Victims' Bill of Rights Act of 2008: Marsy's Law."

**SECTION 2. FINDINGS AND DECLARATIONS**

The People of the State of California hereby find and declare all of the following:

1. Crime victims are entitled to justice and due process. Their rights include, but are not limited to, the right to notice and to be heard during critical stages of the justice system; the right to receive restitution from the criminal wrongdoer; the right to be reasonably safe throughout the justice process; the right to expect the government to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer.
2. The People of the State of California declare that the "Victims' Bill of Rights Act of 2008: Marsy's Law" is needed to remedy a justice system that fails to fully recognize and adequately enforce the rights of victims of crime. It is named after Marsy, a 21-year-old college senior at U.C. Santa Barbara who was preparing to pursue a career in special education for handicapped children and had her whole life ahead of her. She was murdered on November 30, 1983. Marsy's Law is written on behalf of her mother, father, and brother, who were often treated as though they had no rights, and inspired by hundreds of

thousands of victims of crime who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights.

3. The People of the State of California find that the "broad reform" of the criminal justice system intended to grant these basic rights mandated in the Victims' Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the People. Victims of crime continue to be denied rights to justice and due process.

4. An inefficient, overcrowded, and arcane criminal justice system has failed to build adequate jails and prisons, has failed to efficiently conduct court proceedings, and has failed to expeditiously finalize the sentences and punishments of criminal wrongdoers. Those criminal wrongdoers are being released from custody after serving as little as 10 percent of the sentences imposed and determined to be appropriate by judges.

5. Each year hundreds of convicted murderers sentenced to serve life in prison seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of murdered victims and waste millions of dollars each year. In California convicted murderers are appointed attorneys paid by the tax dollars of its citizens, and these convicted murderers are often given parole hearings every year. The families of murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again free to murder.

6. "Helter Skelter" inmates Bruce Davis and Leslie Van Houghton, two followers of Charles Manson convicted of multiple brutal murders, have had 38 parole hearings during the past 30 years.

7. Like most victims of murder, Marsy was neither rich nor famous when she was murdered by a former boyfriend who lured her from her parents' home by threatening to kill himself. Instead he used a shotgun to brutally end her life when she entered his home in an effort to stop him from killing himself. Following her murderer's arrest, Marsy's mother was shocked to meet him at a local supermarket, learning that he had been released on bail without any notice to Marsy's family and without any opportunity for her family to state their opposition to his release.

8. Several years after his conviction and sentence to "life in prison," the parole hearings for his release began. In the first parole hearing, Marsy's mother suffered a heart attack fighting against his release. Since then Marsy's family has endured the trauma of frequent parole hearings and constant anxiety that Marsy's killer would be released.

9. The experiences of Marsy's family are not unique. Thousands of other crime victims have shared the experiences of Marsy's family, caused by the failure of our criminal justice system to notify them of their rights, failure to give them notice of important hearings in the prosecutions of their criminal wrongdoers, failure to provide them with an opportunity to speak and participate, failure to impose actual and just punishment upon their wrongdoers, and failure to extend to them some measure of finality to the trauma inflicted upon them by their wrongdoers.

### **SECTION 3. STATEMENT OF PURPOSES AND INTENT**

It is the purpose of the People of the State of California in enacting this initiative measure to:

1. Provide victims with rights to justice and due process.
2. Invoke the rights of families of homicide victims to be spared the ordeal of prolonged and unnecessary suffering, and to stop the waste of millions of taxpayer dollars, by eliminating parole hearings in which there is no likelihood a murderer will be paroled, and to provide that a convicted murderer can receive a parole hearing no more frequently than every three years, and can be denied a follow-up parole hearing for as long as 15 years.

### **SECTION 4. VICTIMS' BILL OF RIGHTS**

Section 28 of Article I of the California Constitution is amended to read:

**SEC. 28. (a)** The People of the State of California find and declare *all of the following*:

*(1) that Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.*

*(2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. ~~that the~~ The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system ~~to fully protecting those rights and ensuring that crime victims are treated with respect and dignity,~~ is a matter of ~~grave statewide concern~~ *high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.**

*(3) The rights of victims pervade the criminal justice system, ~~encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation.~~ These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).*

*(4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be*

appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested outside the state, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

(5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this state to be granted to any person incarcerated in a penal or other custodial facility in this state as a punishment or correction for the commission of a crime.

(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.

(7) Such-Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.

(8) To accomplish these the goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime. ~~bread reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.~~

(b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

(1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

(2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

(4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

**(5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.**

**(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.**

**(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.**

**(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.**

**(9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.**

**(10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.**

**(11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.**

**(12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.**

**(13) To Restitution.**

**(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes for causing the losses they suffer.**

**(B) Restitution shall be ordered from the convicted persons wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.**

**(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.**

**(14) To the prompt return of property when no longer needed as evidence.**

**(15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before**

*the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.*

*(16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.*

*(17) To be informed of the rights enumerated in paragraphs (1) through (16).*

*(c) (1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.*

*(2) This section does not create any cause of action for compensation or damages against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any of its political subdivisions, or any officer or employee of the court.*

*(d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.*

*(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.*

*(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following:*

*(1) Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.*

*(d) (2) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.*

*(e) (3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail,*

the judge or magistrate shall take into consideration the protection of the public, *the safety of the victim*, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. ~~However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.~~

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) (4) **Use of Prior Convictions.** Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(5) **Truth in Sentencing.** *Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.*

(6) **Reform of the parole process.** *The current process for parole hearings is excessive, especially in cases in which the defendant has been convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.*

(g) As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c) or any successor statute.

## **SECTION 5. VICTIMS' RIGHTS IN PAROLE PROCEEDINGS**

Section 3041.5 of Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code is amended to read:

§3041.5(a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison-Terms Parole Hearings, the prisoner shall be permitted to review his or her file which will

be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf. *Neither the prisoner nor the attorney for the prisoner shall be entitled to ask questions of any person appearing at the hearing pursuant to subdivision (b) of Section 3043.*

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner *and any person described in subdivision (b) of Section 3043* shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(6) *The board shall set a date to reconsider whether an inmate should be released on parole that ensures a meaningful consideration whether the inmate is suitable for release on parole.*

(b)(1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set ~~for the reasons stated in subdivision (b) of Section 3041~~, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

(3) ~~The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than the following, after considering the views and interests of the victim, as follows:~~

(A) ~~Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding. Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than ten additional years.~~

(B) ~~Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may~~

~~direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years. Ten years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than seven additional years.~~

~~(C) Three years, five years, or seven years after any hearing at which parole is denied, because the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety requires a more lengthy period of incarceration for the prisoner, but does not require a more lengthy period of incarceration for the prisoner than seven additional years.~~

~~(4) The board may in its discretion, after considering the views and interests of the victim, advance a hearing set pursuant to paragraph (3) to an earlier date, when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the prisoner provided in paragraph (3).~~

~~(3) (5) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.~~

~~(4) (6) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2) (3).~~

~~(c) The board shall conduct a parole hearing pursuant to this section as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in paragraph (3) of subdivision (a) of section 3041.~~

~~(d)(1) An inmate may request that the board exercise its discretion to advance a hearing set pursuant to paragraph (3) of subdivision (b) to an earlier date, by submitting a written request to the board, with notice, upon request, and a copy to the victim which shall set forth the change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate.~~

~~(2) The board shall have sole jurisdiction, after considering the views and~~

*interests of the victim to determine whether to grant or deny a written request made pursuant to paragraph (1), and its decision shall be subject to review by a court or magistrate only for a manifest abuse of discretion by the board. The board shall have the power to summarily deny a request that does not comply with the provisions of this subdivision or that does not set forth a change in circumstances or new information as required in paragraph (1) that in the judgment of the board is sufficient to justify the action described in paragraph (4) of subdivision (b).*

*(3) An inmate may make only one written request as provided in paragraph (1) during each three year period. Following either a summary denial of a request made pursuant to paragraph (1), or the decision of the board after a hearing described in subdivision (a) to not set a parole date, the inmate shall not be entitled to submit another request for a hearing pursuant to subdivision (a) until a three-year period of time has elapsed from the summary denial or decision of the board.*

Section 3043 of Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code is amended to read:

*§ 3043(a)(1) Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms Parole Hearings at least 90 days before the hearing to any victim of a any crime committed by the prisoner, or to the next of kin of the victim if the victim has died, to include the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, and any other felony crimes or crimes against the person for which the prisoner has been convicted. The requesting party shall keep the board apprised of his or her current mailing address.*

*(2) No later than 30 days prior to the date selected for the hearing, any person, other than the victim, entitled to attend the hearing shall inform the board of his or her intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany him or her.*

*(3) No later than 14 days prior to the date selected for the hearing, the board shall notify every person entitled to attend the hearing confirming the date, time, and place of the hearing.*

*(b)(1) The victim, next of kin, two members of the victim's immediate family, or and two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin in writing prior to the hearing as provided in paragraph (2) of this subdivision have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his, her, or their views concerning the prisoner and the case, including, but not limited to the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, any other felony crimes or crimes against the person for which the prisoner has been convicted, the effect of the enumerated crimes on the victim and the family*

of the victim, crime and the person responsible for these enumerated crimes, and the suitability of the prisoner for parole, ~~except that~~

(2) ~~a~~Any statement provided by a representative designated by the victim or next of kin ~~may cover any subject about which the victim or next of kin have the right to be heard including any recommendation regarding the granting of parole. shall be limited to comments concerning the effect of the crime on the victim. The representatives shall be designated by the victim or, in the event that the victim is deceased or incapacitated, by the next of kin. They shall be designated in writing for the particular hearing prior to the hearing.~~

(c) A representative designated by the victim or the victim's next of kin for purposes of this section ~~may be any adult person selected by the victim or the family of the victim must be either a family or household member of the victim. The board may not shall~~ permit a representative designated by the victim or the victim's next of kin ~~to attend a particular hearing, to provide testimony at a hearing, or and~~ to submit a statement to be included in the hearing as provided in Section 3043.2, ~~even though if~~ the victim, next of kin, or a member of the victim's immediate family is present at the hearing, ~~or if and even though~~ the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.

(d) ~~Nothing in this section is intended to allow the board to permit a victim's representative to attend a particular hearing if the victim, next of kin, or a member of the victim's immediate family is present at any hearing covered in this section, or if the victim, next of kin, or member of the victim's immediate family has submitted a written, audiotaped, or videotaped statement.~~ (e) The board, in deciding whether to release the person on parole, shall consider the *entire and uninterrupted* statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

(e) In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board may, in its discretion, ~~shall~~ allow attendance of additional immediate family members ~~or limit attendance to the following order of preference to include the following:~~ spouse, children, parents, siblings, grandchildren, and grandparents.

~~The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.~~

Section 3044 is added to Article 3 of Chapter 8 of Title 1 of Part 3 of the Penal Code to read:

*§3044(a) Notwithstanding any other law, the Board of Parole Hearings or its successor in interest shall be the state's parole authority and shall be responsible*

for protecting victims' rights in the parole process. Accordingly, to protect a victim from harassment and abuse during the parole process, no person paroled from a California correctional facility following incarceration for an offense committed on or after the effective date of this act shall, in the event his or her parole is revoked, be entitled to procedural rights other than the following:

(1) A parolee shall be entitled to a probable cause hearing no later than 15 days following his or her arrest for violation of parole.

(2) A parolee shall be entitled to an evidentiary revocation hearing no later than 45 days following his or her arrest for violation of parole.

(3) A parolee shall, upon request, be entitled to counsel at state expense only if, considering the request on a case-by-case basis, the board or its hearing officers determine:

(A) The parolee is indigent; and

(B) Considering the complexity of the charges, the defense, or because the parolee's mental or educational capacity, he or she appears incapable of speaking effectively in his or her own defense.

(4) In the event the parolee's request for counsel, which shall be considered on a case-by-case basis, is denied, the grounds for denial shall be stated succinctly in the record.

(5) Parole revocation determinations shall be based upon a preponderance of evidence admitted at hearings including documentary evidence, direct testimony, or hearsay evidence offered by parole agents, peace officers, or a victim.

(6) Admission of the recorded or hearsay statement of a victim or percipient witness shall not be construed to create a right to confront the witness at the hearing.

(b) The board is entrusted with the safety of victims and the public and shall make its determination fairly, independently, without bias and shall not be influenced by or weigh the state cost or burden associated with just decisions. The board must accordingly enjoy sufficient autonomy to conduct unbiased hearings, and maintain an independent legal and administrative staff. The board shall report to the Governor.

## **SECTION 6. NOTICE OF VICTIMS' BILL OF RIGHTS**

Section 679.026 is added to Title 17 of Part 1 of the Penal Code to read:

**Sec. 679.026. (a)** It is the intent of the People of the State of California in enacting this section to implement the rights of victims of crime established in Section 28 of Article I of the California Constitution to be informed of the rights of crime victims enumerated in the Constitution and in the statutes of this state.

**(b)** Every victim of crime has the right to receive without cost or charge a list of the rights of victims of crime recognized in Section 28 of Article I of the California Constitution. These rights shall be known as "Marsy Rights."

**(c)(1)** Every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall, as provided herein, at the time of

*initial contact with a crime victim, during follow-up investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys, provide or make available to each victim of the criminal act without charge or cost a "Marsy Rights" card described in paragraphs (3) and (4).*

*(2) The victim disclosures required under this section shall be available to the public at a state funded and maintained website authorized pursuant to Penal Code Section 14260 to be known as "Marsy's Page."*

*(3) The Attorney General shall design and make available in ".pdf" or other imaging format to every agency listed in paragraph (1) a "Marsy Rights" card, which shall contain the rights of crime victims described in subdivision (b) of Section 28 of Article I of the California Constitution, information on the means by which a crime victim can access the web page described in paragraph (2), and a toll-free telephone number to enable a crime victim to contact a local victim's assistance office.*

*(4) Every law enforcement agency which investigates criminal activity shall, if provided without cost to the agency by any organization classified as a nonprofit organization under paragraph (3) of subdivision (c) of Section 501 of the Internal Revenue Code, make available and provide to every crime victim a "Victims' Survival and Resource Guide" pamphlet and/or video that has been approved by the Attorney General. The "Victims' Survival and Resource Guide" and video shall include an approved "Marsy Rights" card, a list of government agencies, nonprofit victims' rights groups, support groups, and local resources that assist crime victims, and any other information which the Attorney General determines might be helpful to victims of crime.*

*(5) Any agency described in paragraph (1) may in its discretion design and distribute to each victim of a criminal act its own Victims' Survival and Resource Guide and video, the contents of which have been approved by the Attorney General, in addition to or in lieu of the materials described in paragraph (4).*

## **SECTION 7. CONFLICTS WITH EXISTING LAW**

It is the intent of the People of the State of California in enacting this Act that if any provision in this Act conflicts with an existing provision of law which provides for greater rights of victims of crime, the latter provision shall apply.

## **SECTION 8. SEVERABILITY**

If any provision of this Act, or part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

## **SECTION 9. AMENDMENTS**

The statutory provisions of this Act shall not be amended by the Legislature except by a statute passed in each house by roll-call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the statutory provisions of this Act to expand the scope of their application, to recognize additional rights of victims of crime, or to further the rights of victims of crime by a statute passed by a majority vote of the membership of each house.

**SECTION 10. RETROACTIVITY**

The provisions of this Act shall apply in all matters which arise and to all proceedings held after the effective date of this Act.