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

This initiative measure amends a section of the California Constitution; 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.

and amends and adds sections to the Penal Code

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07-0100

Amdt. #1NS

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

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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.

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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

6/8/82

Prop. 8

SECTION 4.1.

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

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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.* ~~, broad 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.

s/o

(13) To Restitution. restitution ital

(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

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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,

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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 subdivision (c) of 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. of

(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.* 10

(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~~

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~~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.

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SECTION 5.2.

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 ~~30~~ *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~~ *has 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 5.3.

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 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 6.1.

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.

SUBJECT TO COURT ORDERED CHANGES