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## **WILL PROPOSITION 21, "THE GANG VIOLENCE AND JUVENILE CRIME PREVENTION ACT," DECREASE JUVENILE CRIME IN CALIFORNIA?**

### **INTRODUCTION**

The "Gang Violence and Juvenile Crime Prevention Act," Proposition 21 on the March 2000 ballot, is comprised of two main components. First, the initiative substantially changes the juvenile court system by making it easier to prosecute juveniles as adults, and significantly changes juvenile probation and sentencing procedures. Secondly, the initiative increases penalties for gang related violence and sets up a gang registration process. Former Governor Pete Wilson is the sponsor of Proposition 21 along with the California District Attorneys Association and the California State Sheriffs Association.

### **HOW THE CURRENT SYSTEM WORKS**

While the adult correctional system was established with the goal of punishment, the juvenile justice system has a different goal: treatment and rehabilitation of juvenile offenders. Because of this, the state's juvenile justice system has a broad array of methods and programs for addressing juvenile crime, taking into account the severity of the offense and the background of the offender. These include fines, treatment programs, detention, incarceration, and community supervision. Generally, the system provides for escalating responses to offenses of increasing severity, such as informal probation, formal probation, detention, and incarceration. Additionally, because the system has a goal of rehabilitation, many more agencies have a role to play in California's juvenile justice system than in the adult system, including schools, social services agencies, and community-based organizations.

The juvenile justice system gives police, probation officials, and prosecutors broad discretion over the treatment of juvenile offenders. Upon arrest, the police can release the juvenile to his or her parents or take the offender to juvenile hall. The county probation department, the agency responsible for juvenile hall, can decide whether to "book" the offender. If a juvenile is booked into juvenile hall, the probation department or district attorney can decide whether to file a "petition" with the juvenile court, which is analogous to filing charges in the adult criminal justice system.

Upon conviction in the juvenile system, an offender may be placed on probation or in foster care or a group home, a county juvenile detention facility, or the California Youth Authority (CYA). Alternatively, for some offenses, the District Attorney can request referral to the adult court system. In addition, as of January 1, 2000, minors 16 years or older accused of committing specified serious offenses, who previously committed a felony, must automatically be tried in adult criminal court. Offenders who are convicted in an adult court can be sent to the CYA or directly to the California Department of Corrections (CDC) if they are 16 years of age or older. Under current law, juveniles tried

and convicted in adult court may receive any sentence an adult could receive for the same offense, up to and including a life sentence without the possibility of parole. The only sentence they may not receive is the death penalty.

## WHAT DOES PROPOSITION 21 DO?

### Trial Of Minors As Adults

**Under current law**, California has two methods for transferring juvenile offenders to the adult court system. The first, "judicial waiver," involves a fitness hearing before a judge and takes into account a number of factors including the ability of the juvenile system to provide appropriate treatment and the severity of the offense. The second method, provided by SB 334 of 1999 (see below), provides for automatic prosecution in adult court for youth 16 years or older accused of murder, specified sex crimes, or aggravated kidnapping, if the minor previously committed any felony when they were age 14 or older.

**Proposition 21** increases the circumstances under which a juvenile offender can be sent directly to the adult court system. If enacted, Proposition 21 would *require* that youths aged 14 and older be tried in adult court for specified violent crimes and would *allow* prosecutors, without judicial review, to directly file cases in adult court for several categories of juveniles charged with certain serious offenses, (at age 14 or 16 depending on the offense and/or the juvenile's previous record). Prosecutors would be allowed to refer youths aged 16 or older to the adult court system through judicial transfer hearings for a broader range of offenses, including those involving gang membership. One of the most significant changes included in Proposition 21 is the addition of "unarmed" robbery to the list of "serious" offenses that could result in the transfer of a juvenile to the adult court system.

**Fiscal Impact:** According to the Legislative Analyst, the cost of these changes is unknown and would depend on the extent to which prosecutors use their new authority. The impact could range from minor savings, if prosecutors only transfer the cases that they currently ask the juvenile court to transfer, to significant costs if prosecutors expand the use of adult courts for juvenile offenders. If Proposition 21 results in a significant increase in the use of the adult court system for juveniles, counties could incur additional annual operating costs of tens of millions of dollars to more than \$100 million annually, with one-time construction costs of \$200 million to \$300 million to house these offenders while they are awaiting trial in the adult court system.<sup>1</sup>

### Juvenile Probation And Sentencing

**Current law** gives authorities in the juvenile justice system considerable discretion with respect to sentencing youth convicted for an offense. This discretion is in keeping with the juvenile justice system's focus on individualized treatment and rehabilitation. Incarcerated youth are, under most circumstances, sent to juvenile facilities where there is a greater emphasis on education, drug treatment, and counseling than in the adult criminal justice system.

**Proposition 21** would eliminate discretion in juvenile sentencing for youth convicted of a number of specified crimes and increase the penalties for youth convicted of certain offenses. Specifically, Proposition 21:

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<sup>1</sup> Legislative Analyst's Office, *Analysis of Proposition 21 for the Ballot* (November 1999) downloaded from [http://www.lao.ca.gov/initiatives/2000/21\\_01\\_2000.html](http://www.lao.ca.gov/initiatives/2000/21_01_2000.html). Unless otherwise noted, all of the cost estimates cited in the *Brief* are from this publication.

- Expands the list of offenses for which a juvenile suspect must be detained pending a hearing before a judge.
- Eliminates the option of informal probation for most youth aged 14 and above who are charged with a felony (under informal probation, the offender lives in the community and is required to participate in services such as job training, mental health counseling, or drug treatment).
- Requires offenders convicted of certain crimes in juvenile court to be sentenced to a secure facility, such as a juvenile hall, ranch, or camp.
- Expands the circumstances where juveniles, aged 16 and above who are convicted in adult court, are sent to state prison (the CDC), rather than to the CYA.
- Makes it easier for prosecutors to establish that a probation violation has occurred.

These provisions will increase the number of juvenile offenders who must be detained pending a court appearance and will likely result in more offenders being sentenced to secure juvenile facilities and the CDC.

**Fiscal Impact:** Requiring counties to house certain juvenile offenders in a secure facility could significantly increase counties' costs by an unknown amount. The requirement that certain juveniles convicted in adult court be sentenced directly to CDC could result in some net state savings since it is less costly to house a person in CDC than in CYA, primarily due to the additional educational and treatment programs offered at the CYA. The Legislative Analyst cites research studies indicating that juveniles who receive an adult court sanction tend to commit more crimes and return to prison more often than juveniles who are sent to juvenile facilities, which could lead to a significant increase in state and local costs.

## Gangs

**Current law** imposes lengthier sentences on individuals convicted of a gang-related criminal activity and requires that an individual must be currently and actively involved in a gang in order for the sentence enhancements to apply.

**Proposition 21's** gang provisions significantly expands the definition of what constitutes criminal activity, imposes lengthier sentences for gang-related crime, and requires jail time for relatively minor offenses if the offense is deemed to be gang-related. Proposition 21 also requires local law enforcement agencies to maintain a registry of individuals suspected of gang membership. Adult gang members convicted of murder would be eligible for the death penalty, and individuals convicted of certain other gang-related crimes would be subject to indeterminate life sentences. Proposition 21 would also loosen current legal standards to permit prosecution under state gang statutes when the person is not a gang member and does not devote all or a substantial part of his or her time to the gang. Proposition 21 would also allow wider use of "wire taps" by law enforcement officials attempting to investigate suspected gang activity. Finally, Proposition 21 requires at least 180 days of mandatory detention for anyone convicted of a gang-related offense, including a gang-related misdemeanor.

**Fiscal Impact:** According to the CDC, this portion of the initiative would result in ongoing annual costs of about \$30 million and one-time construction costs totaling about \$70 million by 2025 to house additional offenders for longer periods. The gang registration program would also result in unknown annual costs to local law enforcement agencies.

## Additions To Three Strikes

**Proposition 21** adds a number of offenses to the list of "serious" and "violent" felonies which count as

"strikes" under the state's "three strikes" law. If charged with these offenses, adult and juvenile offenders can not plea bargain to a lesser charge and most of these crimes would be subject to current law, which requires offenders to serve at least 85 percent of their sentence before they can be released.

**Fiscal Impact:** The California Department of Corrections estimates that after 30 years, the increase in the inmate population attributable to the "three strikes" changes in Proposition 21 would increase operating costs by \$300 million annually and one-time capital construction costs for additional prisons would be \$675 million. This provision could also result in unknown, but potentially significant, costs to local governments for detaining suspects prior to trial and additional prosecution costs.

## Confidentiality

### Proposition 21:

- Allows law enforcement officials to release the names of juveniles upon arrest for "serious" felonies instead of waiting for charges to be filed by the district attorney as required under current law.
- Allows release of names of juveniles *suspected* of committing a violent offense if the release would protect the public, while current law requires a court order.
- Prevents the "sealing" of arrest records for juveniles 14 years of age or older convicted of a "serious" or "violent" offense. Under current law, juvenile records can be sealed after six years.
- Requires the state Department of Justice to maintain complete criminal history records for all juveniles convicted of a felony. Currently, the Department only keeps records on youth convicted of serious and violent felonies.

## Vandalism

**Proposition 21** lowers the threshold for felony defacement (graffiti) or destruction of property from \$50,000 to \$400 and increases the penalty for misdemeanor vandalism from a maximum of six months to a maximum of one year in the county jail.

## HOW MUCH WILL PROP 21 COST THE STATE OF CALIFORNIA?

The Legislative Analyst estimates that Proposition 21, as a whole, will increase state costs by more than \$330 million per year and result in one-time costs totaling about \$750 million in the long term. Local government could incur ongoing annual costs of tens of millions of dollars to more than \$100 million, and one-time costs of \$200 million to \$300 million. The major state costs stem from the expansion of the state's "three strikes" law, sentence enhancements for gang offenses, and the expanded definition of violent felonies. An analysis of Proposition 21 by the California State Association of Counties (CSAC) estimates that the major costs to counties will stem from the mandatory detention provisions, changes to probation procedures and expansion, and gang registration requirements.

## "THE FACTS": JUVENILE CRIME IN CALIFORNIA

While media portrayals suggest that there are more and more serious crimes committed by juveniles, statistics compiled by the state's Department of Justice suggest the opposite. By most measures, juvenile crime has declined in California over the past decade. Felony juvenile arrests declined by 15 percent from 1989 to 1998.<sup>2</sup> Juvenile misdemeanor arrests increased by 22 percent during the same period.

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<sup>2</sup> All statistics cited in paragraph from *California Criminal Justice Profiles 1998*, California Department of Justice, downloaded from <http://www.caag.state.ca.us>, Charts 3C and 4C.

More significantly, however, the number of felony arrests per 100,000 juveniles decreased by 30 percent between 1989 to 1998, while the arrest rate for misdemeanors has held steady. Although there were more juvenile misdemeanor arrests in 1998 than in 1989, after taking population growth into account, the arrest rate had remained the same. While there have been a number of "high profile" killings involving juveniles, juvenile homicide arrests dropped by 42 percent between 1989 and 1998.

Despite these trends, California has one of the nation's highest youth incarceration rates, 549 per 100,000, as compared to 368 per 100,000 for the nation as a whole.<sup>3</sup> While California is home to 12.6 percent of juveniles, it accounts for 18.8 percent of juveniles in custody.<sup>4</sup> Minority youth are particularly impacted, with African-Americans youth more than six times as likely to be incarcerated as white youth.<sup>5</sup>

Minority youth are also disproportionately likely to be transferred from the juvenile to adult court systems. According to the US General Accounting Office, white teens accounted for only 5.5 percent of the youths transferred to adult court in California in 1990 and 1991, as compared to 34.3 percent and 60.2 percent of black teens and "other" racial minorities, respectively.<sup>6</sup>

Research studies suggest that the approaches proposed in Proposition 21 are ineffective at reducing juvenile crime. Opponents point to the findings of studies suggesting that the current system is working and that Proposition 21 will not result in lower crime rates. Specifically:

- Studies demonstrated that automatic transfer programs in Idaho and New York were not effective in deterring crime.<sup>7</sup>
- A study in Florida concluded recidivism was actually greater for juveniles prosecuted as adults than for those tried in the juvenile justice system.<sup>8</sup>
- California's current process for transferring juveniles to the adult court system appears to be working. In Los Angeles County, for example, juveniles are transferred to the adult system in 80 percent of the cases where a request is made.<sup>9</sup>
- Juveniles sentenced to adult facilities are at greater risk of abuse than those housed in juvenile facilities. Youths housed in adult prisons are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be attacked with a weapon than youths in a juvenile facility.<sup>10</sup>

## SHOULD WE MAKE PREVENTION A PRIORITY?

Proposition 21 focuses on reducing juvenile crime by imposing stricter punishment on juvenile offenders. Opponents argue that a more effective approach would target the risk factors associated with increased criminal activity and focus on effective intervention. Prevention-oriented programs show

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<sup>3</sup> Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, *Juvenile Offenders and Victims: 1999 National Report*, p. 189. The custody rate is for juveniles ages 10 through the upper age of original juvenile court jurisdiction in each state.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid. p. 197. The incarceration rate for African Americans was 1,819 per 100,000 youths -- more than six times the rate for white youth similarly incarcerated, which was 299 per 100,000 youths in 1997.

<sup>6</sup> United States General Accounting Office, *Juvenile Justice: Juveniles Processed in Criminal Court and Case Dispositions* (August 1995), downloaded from <http://www.gao.gov>.

<sup>7</sup> Eric L. Jenson and Linda K. Metsger, "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime," *Crime & Delinquency*, Vol. 40 No. 1 (January 1994), and Simon Singer and David McDowall, "Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law," *Law and Society Review*, Vol. 22 (1988), pp. 521-35.

<sup>8</sup> Donna M. Bishop, et al., "The Transfer of Juveniles to Criminal Court: Does It Make A Difference?" *Crime and Delinquency*, " Vol. 42, No. 2 (April 1996), pp. 171-191.

<sup>9</sup> Los Angeles County District Attorney's Office, Juvenile Division, *Fitness Hearings, Calendar Year 1994 - 1998*.

<sup>10</sup> Martin Forst, Jeffrey Fagen and T. Scott Viviona, "Youth In Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile & Family Court Journal*, Vol. 40, No. 1 (1989).

promise of significantly reducing repeat offenses. Factors that increase the likelihood that a juvenile will engage in criminal activity include:

- **Poor academic performance**, poor attendance, expulsion, or dropping out of school are associated with higher rates of juvenile crime.
- **Family problems**, including sexual or physical abuse, neglect, a history of criminal activity by a family member, and abandonment are associated with higher rates of juvenile crime. Family problems also indicate a lack of parental control.
- **Substance abuse**, including arrests for drug or alcohol possession or sale, and the impact of substance abuse on juvenile behavior are associated with higher rates of juvenile crime. Alcohol or drug use can lower a person's inhibitions, making it easier to engage in criminal activity, and drug users may engage in criminal activities to obtain money to purchase drugs.
- **Gang membership**, especially at an early age, is strongly associated with future criminal activity.
- **Gun possession** is a factor that "magnifies" juvenile crime by making offenses more likely to result in injury or death.<sup>11</sup>

Other risk factors cited include juveniles from single parent households, behavior and conduct problems, poverty, and early sexual experience.<sup>12</sup>

It is important to note that these risk factors do not guarantee criminal behavior, but simply are associated with higher risk of such behavior. Because young offenders who exhibit multiple risk factors are the most likely to become chronic recidivists -- "career criminals" -- early intervention strategies that address these factors could reduce the rates of future criminal activity.

Both the Little Hoover Commission and the state's "blue ribbon" Task Force on Juvenile Crime and the Juvenile Justice Response concluded that California will only reduce youth violence with a significant investment in violence prevention programs.<sup>13</sup> Violence prevention and early intervention strategies include truancy and dropout prevention programs, mentoring programs, conflict resolution curricula in school, after-school programs, parent-training programs, youth employment programs, early intervention programs for first-time juvenile offenders, programs preventing youth access to firearms, and community policing.

One model that appears to be working is Orange County's "8 Percent Solution" Program. This program is based on research which shows that a small number of juveniles (eight percent) account for the vast majority of chronic, violent juvenile crime. Additional research points to certain characteristics of these offenders that make it possible to accurately identify and target these juveniles for early intervention at the time of their first-ever system referral.<sup>14</sup> The "8 Percent Solution" Program targets youth at risk of becoming repeat offenders and provides a range of prevention and early intervention efforts.

The "8 Percent Solution" Program includes a significant reduction in probation officers' caseloads to allow more intensive supervision, involvement of family members in the service plan, community service employment, an emergency cash fund to help families pay rent or pay utility bills, and assignments to work with the disabled and elderly.<sup>15</sup>

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<sup>11</sup> Legislative Analyst Office, *Juvenile Crime: Outlook for California* (May 1995), pp. 29-30.

<sup>12</sup> Peter W. Greenwood, "Responding to Juvenile Crime: Lessons Learned," *The Future of Children, The Juvenile Court Center for the Future of Children*, Vol. 6:3 (Winter 1996), pp. 75-85.

<sup>13</sup> Little Hoover Commission, *The Juvenile Crime Challenge: Making Prevention a Priority*, (September 1994) and *Final Report of the California Task Force to Review Juvenile Crime and the Juvenile Justice Response* (September 1996).

<sup>14</sup> Gwen A. Kurz and Louis E. Moore, "The 8 Percent Problem": *Chronic Juvenile Offender Recidivism* (March 1994).

<sup>15</sup> Orange County Probation Department, "8 Percent Early Intervention Program: Program Design & Preliminary Field Test Results."

Researchers tracked participants for six months after completion of the program and compared participants to offenders with similar records who did not participate in the program. 81 percent of the youth that did not participate in the program face additional court petitions (which could include charges or probation violations) during the tracking period and 55 percent committed another criminal offense. In contrast, 42 percent of the youth who participated in the program were the subject of petitions and only 22 percent committed a subsequent offense. The incarceration rate for participants was approximately one-third that of non-participants (15 percent as compared to 43 percent).<sup>16</sup>

A recent study by RAND concluded investments in early intervention and juvenile crime prevention programs may provide a cost-effective alternative to the state's "three strikes" law. Programs which used incentives, including cash, to induce disadvantaged high school students to graduate and parent training for families with at-risk primary-school children could roughly double the crime reduction attributable the "three-strikes" law at twenty percent of the cost.<sup>17</sup>

## **A NEW LAW INCLUDES SOME OF PROPOSITION 21'S CHANGES**

SB 334 (Alpert, Chapter 996 of 1999) addresses some of the serious offender issues encompassed in Proposition 21, with significant differences. Similar to Proposition 21, SB 344 expands the range of cases that are transferred to adult courts by mandating that certain minors be directly prosecuted in adult criminal court without benefit of a judicial hearing to determine the minor's suitability for juvenile court jurisdiction, treatment, and rehabilitation. However, SB 334 focuses primarily on the most serious juvenile offenders, leaving the decision on waiver of less serious offenders to the juvenile court. The new law also requires juveniles convicted of offenses involving firearms to serve time in a secure facility, but allows for a treatment-based placement upon the recommendation of a mandatory mental health assessment.

One significant difference between the new law and Proposition 21 is a provision allowing the adult court system to send an offender back to the juvenile justice system if the youth is convicted of a less serious offense. Finally, SB 344 does not include harsher penalties for gang-related offenses, allow prosecutorial discretion to send juveniles to adult court, or create new "strikes."

## **WHAT THE PROPONENTS SAY**

Proponents argue that California's current juvenile justice system is ill-equipped to protect the public from violent and repeat juvenile offenders and that juvenile crime is on the rise. In particular, proponents note that the philosophy of rehabilitation and treatment was adopted at a time when most juvenile crime consisted of petty offenses. More violent offenses, they argue, warrant harsher punishments. Proponents believe that juvenile court resources are spent disproportionately on violent offenders with little chance to be rehabilitated.

Proposition 21 focuses on criminal street gangs and gang-related violence as significant threats to public safety. Proponents argue that gangs have become bolder and better organized in recent years and, in some instances, bear a closer relationship to organized crime groups rather than mere street gangs. Supporters believe that the problem of youth and gang violence will increase without active intervention because the juvenile population is projected to grow substantially by the next decade. Finally, the proponents argue that Proposition 21 may result in savings, not additional costs, by

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<sup>16</sup> Ibid.

<sup>17</sup> Peter W. Greenwood et al., *Diverting Children from a Life of Crime: Measuring Costs and Benefits* (RAND, 1996).

reducing economic losses associated with criminal activity and by lowering court and prison costs if fewer crimes are committed.

## WHAT THE OPPONENTS SAY

Opponents of Proposition 21 point to recent data showing the decline in juvenile crime, particularly serious crimes, and argue that more punitive approaches are not needed. Opponents stress that Proposition 21's emphasis on transferring young offenders to the adult criminal justice system will deny access of those convicted to services and education that could reduce the likelihood of repeat criminal behavior. Eliminating the ability to have juvenile criminal records "sealed" could limit the employment and educational opportunities of young people who make a mistake and are then successful in turning their lives around. This is particularly important, opponents argue, since two-thirds of youthful offenders never commit a second crime.<sup>18</sup>

Finally, opponents argue that Proposition 21 raises serious civil liberties issues by criminalizing gang membership, regardless of actual criminal activity. They also point to declines in gang membership and gang crime over the past few years. They note that these provisions could be easily abused, particularly in minority communities and lead to the incarceration of youths that are guilty of minor or no criminal offenses. Opponents of Proposition 21 point to SB 344 as evidence that reforms in the juvenile justice system can be made through the legislative, rather than the initiative, process, which allows for future fine-tuning and the consideration of alternative proposals. Lastly, opponents argue that Proposition 21 is so expensive that it will necessarily divert public resources into corrections and away from education and other needed public services.

## ISSUES TO CONSIDER

When evaluating Proposition 21, voters should consider several important policy implications:

- Are existing laws "working"? Are tougher laws needed? Is prevention or better enforcement a more desirable alternative?
- How would the cost of implementing Proposition 21 impact other government services? Are the changes proposed by Proposition 21 the most cost-effective reforms for achieving a greater degree of public safety?
- How will Proposition 21 affect youth in low income and minority communities?

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*Rebecca Gonzales prepared this Brief under the direction of Jean Ross. The California Budget Project (CBP) is a nonpartisan, nonprofit organization whose goal is to promote a better understanding of state fiscal issues in order to promote a healthy public sector based on a fair and equitable tax system. General operating support for the California Budget Project is provided by grants from the California Endowment, James Irvine, Ford, Charles Stewart Mott, Friedman Family, Streisand, and California Wellness Foundations and individual donations and subscriptions. The California Budget Project neither supports nor opposes Proposition 21.*

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<sup>18</sup> Gwen A. Kurz and Louis E. Moore, "The 8 Percent Problem": Chronic Juvenile Offender Recidivism (March 1994).