Constitutionality of Senate Bill 1391
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I. Introduction

California’s Senate Bill 1391, enacted last year, prohibits prosecutors from charging 14- and 15-year-old youth in adult criminal court. The law was passed by both houses of the California legislature and then signed by Governor Jerry Brown on September 30, 2018. In recent weeks, a number of state prosecutors have challenged the law, arguing that S.B. 1391 is unconstitutional because it impermissibly amends two prior ballot initiatives. On February 10, 2019, Dean Erwin Chemerinsky published a column in the Sacramento Bee addressing these claims.

The undersigned legal experts have additionally reviewed these claims and agree that S.B. 1391 is a lawful and proper use of legislative authority to set the minimum age for adult prosecution.

The state legislature first authorized prosecuting 14- and 15-year-olds in adult court in 1994, and the constitution authorizes the legislature to revisit that decision now. In 2000, the electorate passed Proposition 21 which focused on increasing punishment for youth. It mandated that prosecutors “direct file”—bring charges in adult court, bypassing juvenile court—for certain charges, and created discretion to do so for others. Sixteen years later, Proposition 57 rolled back these provisions, leaving Prop. 21 irrelevant to the present analysis of S.B. 1391.

Senate Bill 1391 was designed to further the core purpose of Prop. 57: enhance public safety and reduce crime by rehabilitating more youth through the juvenile system. Prop. 57 took the first step by requiring prosecutors to petition a judge before charging children as adults. Senate Bill 1391 takes the next step: it revisits the 1994 law that lowered the age of eligibility for adult prosecution to 14 and returns the age of eligibility to 16.

Senate Bill 1391 and Prop. 57 are consistent with and complement one another. Arguments to the contrary raised by some prosecutors in the state ignore the history of sentencing legislation in California, distort the stated intent of Prop. 57, and disregard the research-based purposes underlying S.B. 1391, as clearly reflected in its legislative history.

II. Standard of Review

Any constitutional challenge to a legislative statute comes with a heavy burden. “[U]nder long-established principles, a statute, once enacted, is presumed to be constitutional”1 and must be upheld “unless [its] unconstitutionality clearly, positively and unmistakably appears.”2 Senate Bill 1391 reflects straightforward legislative authority, and its opponents fail to meet the high threshold required to challenge its constitutionality.

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1 Lockyer v. City and County of San Francisco, 33 Cal.4th 1055, 1119 (2004).
2 In re Dennis M., 70 Cal. 2d 444, 453 (1969) (quoting Lockheed Aircraft Corp. v. Superior Court, 28 Cal.2d 481, 484 (1946)).
III. Argument

A. Senate Bill 1391 Amends Assembly Bill 560, Not Proposition 57

Opponents of S.B. 1391 mischaracterize the law to manufacture a controversy that does not really exist. They argue that S.B. 1391 amends Prop. 57 in a way inconsistent with Prop. 57’s purpose. But that incorrectly assumes that S.B. 1391 amends Prop. 57 at all. It does not.

Prop. 57 eliminated the authority of prosecutors to directly file cases of youth in adult court. It left in place an existing transfer hearing process at which a judge decides whether to transfer a youth to adult court. Senate Bill 1391 changed who is eligible for adult prosecution. It raised the age for adult prosecution to 16, returning to what had been state policy for decades prior to 1994. Senate Bill 1391 redefined the class of youth eligible for adult prosecution, and therefore it modified not Prop. 57, but rather the 1994 sentencing statute that originally authorized the adult prosecution of youth under 16 years old, Assembly Bill 560.3

The California legislature has clear authority to modify an earlier legislative statute, and Senate Bill 1391 is a constitutional exercise of that legislative authority.

B. Senate Bill 1391 Furthers the Stated Purposes of Proposition 57

Even assuming that S.B. 1391 amends Prop. 57, this change is permitted by the terms of Prop. 57 itself. Prop. 57 authorized legislative amendments that are “consistent with and further the intent of this act[.]”4 The legislature is once again entitled by long-standing law to deference: courts must uphold S.B. 1391 as a proper legislative amendment if “by any reasonable construction” it is consistent with and furthers the intent of Prop. 57.5

The heart of Prop. 57, as it pertains to juvenile justice, is ensuring that more youth get the opportunity for rehabilitation within the juvenile system. This core purpose is articulated in court decisions, expressly set forth in Prop. 57’s intent and purpose, described in the official voter guide, and delineated in the legislative history of S.B. 1391.6 A California Court of Appeals decision explained that it was the “intent of the electorate in approving Proposition 57 . . . to broaden the number of minors who could potentially stay within the juvenile justice system, with its primary emphasis on rehabilitation rather than punishment.”7 The California Supreme Court has recognized that Prop. 57 was meant to create an “ameliorative change to the criminal law . . .

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4 Proposition 57, Section 5.
6 See Amwest, 11 Cal.4th at 1259 (“Where, as here, a constitutional amendment is subject to varying interpretations, evidence of its purpose may be drawn from many sources, including the historical context of the amendment, and the ballot arguments favoring the measure.”).
intended to extend as broadly as possible,” including to “ameliorate the possible punishment for a class of persons, namely juveniles.”

Courts explaining the initiative’s purpose have drawn from the “Purpose and Intent” section of Prop. 57, stating that the measure was designed to: “1. Protect and enhance public safety. 2. Save money by reducing wasteful spending on prisons. 3. Prevent federal courts from indiscriminately releasing prisoners. 4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles. 5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.”

By design, S.B. 1391 mirrors the same policy goals and legislative intent. In passing S.B. 1391, the legislature explicitly found that it “is consistent with and furthers the intent of Proposition 57,” and that raising the age of adult prosecution furthers its policy goals—enhancing public safety, reducing recidivism, cutting prison spending, and rehabilitating youth in the juvenile system.

This was not a conclusory legislative finding. It relied on over two decades of research showing that prosecuting youth as adults does not increase public safety. The proponents of Prop. 57 recognized that “minors who remain under juvenile court supervision are less likely to commit new crimes.” In 2007, an independent task force review of scientific evidence, published by the Centers for Disease Control and Prevention (CDC), found that “transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth.” These results follow from the reality, documented in growing cognitive research, that young people are less culpable and are especially good candidates for rehabilitation.

The legislative history of S.B. 1391 states that “research has debunked [the] myth” that “young people [are] fully formed at around age 14,” and “science has proven that children and youth

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8 People v. Superior Court (Lara), 4 Cal.5th 299, 309 (2018).
9 Proposition 57, Purpose and Intent.
10 This legislative finding, while not binding on the courts, should be given great weight and followed unless it is found to be unreasonable and arbitrary. See Amwest Surety Ins. Co. v. Wilson, 11 Cal.4th at 1252; California Housing Finance Agency v. Elliott, 17 Cal.3d 575, 583 (1976).
who commit crimes are very capable of change.”\(^\text{14}\) This is the same research on which the U.S. Supreme Court has relied in placing constitutional limits on punishment for youths.\(^\text{15}\)

Opponents of S.B. 1391, however, ignore the deep synergy between S.B. 1391 and Prop. 57, instead shifting the focus from the central purposes of the two laws to a secondary effect, judicial discretion. They argue that S.B. 1391 is inconsistent with Prop. 57 because judges no longer have the authority to transfer 14- and 15-year-olds to adult court. These arguments obscure the fact that Prop. 57 eliminated prosecutorial discretion to directly charge youth as adults, and S.B. 1391 further limited the prosecutor’s role.

As noted by Dean Erwin Chemerinsky, this argument is “little more than sleight of hand.” It asks courts to ignore the core purposes of rehabilitating children and improving public safety, and to focus only on judicial power. But judicial discretion under Prop. 57 is a procedural safeguard against prosecutors, not a policy goal. It was a byproduct of eliminating the unilateral power of prosecutors to charge children as adults, all with the intent of, as the voter guide explained, “emphasizing rehabilitation for minors in the juvenile system.”\(^\text{16}\)

**Keeping all 14- and 15-year-olds in juvenile court will further emphasize youth rehabilitation, consistent with Prop. 57.**

**C. Senate Bill 1391 does not amend Proposition 21**

Senate Bill 1391’s opponents also argue that it is an unconstitutional amendment of Prop. 21, which was passed in 2000. This argument misstates both laws and again ignores the effect of Prop. 57 in 2016.

Prop. 21’s amendments made adult charges mandatory for some charges and expanded the power of prosecutors to bypass juvenile court and prosecute youth as adults for others. But Prop. 57 repealed these provisions and others. As a Court of Appeals decision last year noted, “The voters apparently rethought their votes on Proposition 21 and passed Proposition 57 at the November 8, 2016, general election.”\(^\text{17}\) Prop. 57 eliminated the authority of prosecutors to directly file cases of youth in adult court and removed the presumption that certain youth are “unfit” for juvenile court. There was a dramatic shift in purpose, as well: The purpose of Prop. 21 was harsher punishment, while the purpose of Prop. 57 is increased rehabilitation. Prop. 57 ensured a process guided by the principles of rehabilitation with the express goal of reducing the number of children tried as adults.\(^\text{18}\)


\(^{17}\) *J.N. v. Superior Court*, 23 Cal.App.5th 706, 710-11 (2018); see also *People v. Cervantes*, 9 Cal.App.5th 569, 596 (2017) (“Proposition 57 was designed to undo Proposition 21”).

\(^{18}\) See *Vela*, 21 Cal.App.5th at 1107 (“while the intent of the electorate in approving Proposition 21 was to broaden the number of minors subject to adult criminal prosecution, the intent of the
Some opponents of S.B.1391 also argue that it unlawfully amends Prop. 21 by affecting amendments to the penal code related to the imposition of certain mandatory minimum sentences. But S.B. 1391 does not amend the penal code, and it was true before S.B. 1391 that 14- and 15-year-olds charged in juvenile court were not subject to the mandatory minimums outlined in the penal code. That has not changed.

**Therefore, Prop. 21 is not relevant to this analysis.**

**IV. Conclusion**

In 1994, the California legislature for the first time authorized the prosecution of children under the age of 16 in adult court. With S.B. 1391, the legislature modified that statute, in effect returning California to its pre-1994 status as a state that does not prosecute youth under the age of 16 as adults. Senate Bill 1391 also is consistent with and furthers the intent and purpose of Prop. 57, which was the first step in reforming a system that gave prosecutors authority to charge children in adult court. Prop. 57 repealed provisions of Prop. 21 and was guided by the purpose of rehabilitating more youth. With S.B. 1391, California moves further toward that goal.

**Senate Bill 1391 is a constitutional exercise of legislative power, and should be upheld.**

Sincerely,

**Janet Cooper Alexander**
Frederick I. Richman Professor of Law, Emerita
Stanford Law School

**Ty Alper**
Clinical Professor of Law
University of California, Berkeley School of Law

**Hadar Aviram**
Thomas Miller ’73 Professor of Law
University of California, Hastings College of the Law

**Barbara Babcock**
Crown Professor of Law, Emerita
Stanford Law School

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electorate in approving Proposition 57 was precisely the opposite. . . . to broaden the number of minors who could potentially stay within the juvenile justice system, with its primary emphasis on rehabilitation rather than punishment”).

19 Proposition 21, Section 4.
20 Academic affiliations noted for identification purposes only.
W. David Ball  
Associate Professor  
Santa Clara University School of Law  

Joseph Bankman  
Ralph M. Parsons Professor of Law and Business  
Stanford Law School  

Rosa Bay  
Lecturer in Law  
Director, Education Advocacy Clinic, East Bay Community Law Center  
University of California, Berkeley School of Law  

Lara Bazelon  
Associate Professor of Law  
Director, Criminal Juvenile Justice Clinic and Racial Justice Clinic  
University of San Francisco School of Law  

George Bisharat  
The Honorable Raymond L. Sullivan Professor of Law  
University of California, Hastings College of the Law  

Paul Brest  
Former Dean  
Professor of Law, Emeritus  
Co-Director, Law and Policy Lab  
Stanford Law School  

Justin Brooks  
Professor of Law  
Director, California Innocence Project  
California Western School of Law  

Samantha Buckingham  
Clinical Professor of Law  
Director, Juvenile Justice Clinic  
Loyola Law School, Los Angeles  

Beth Caldwell  
Professor of Legal Analysis, Writing, and Skills  
Southwestern Law School  

Devon W. Carbado  
The Honorable Harry Pregerson Professor of Law  
Associate Vice Chancellor, BruinX, ULCA Office of Equity, Diversity and Inclusion  
UCLA School of Law
James Cavallaro  
Professor of Law  
Director, International Human Rights and Conflict Resolution Clinic  
Director, Human Rights Center  
Stanford Law School

Jennifer M. Chacón  
Professor of Law  
UCLA School of Law

Erwin Chemerinsky  
Dean  
Jesse H. Choper Distinguished Professor of Law  
University of California, Berkeley School of Law

Eric C. Christiansen  
Professor of Law  
Golden Gate University School of Law

Dr. Neil H. Cogan  
Former Dean, Law School  
Professor, Constitutional Law  
Whittier College

Catherine H. Coleman  
Professor of Lawyering Skills  
University of Southern California Gould School of Law

Beth A. Colgan  
Assistant Professor of Law  
UCLA School of Law

Holly S. Cooper  
Lecturer in Law  
Co-Director, Immigration Law Clinic  
University of California, Davis School of Law

Constance de la Vega  
Marshall P. Madison Professor  
Academic Director, International Programs  
Dean’s Circle Scholar  
University of San Francisco School of Law
Sharon Dolovich  
Professor of Law  
Director, UCLA Prison Law and Policy Program  
UCLA School of Law

Ingrid V. Eagly  
Professor of Law  
Faculty Director, David J. Epstein Program in Public Interest Law and Policy  
UCLA School of Law

Sam Erman  
Associate Professor of Law  
University of Southern California Gould School of Law

David Faigman  
Chancellor and Dean  
John F. Digardi Distinguished Professor of Law  
University of California, Hastings College of the Law

Robert Fellmeth  
Price Professor of Public Interest Law  
Executive Director, Center for Public Interest Law and Children's Advocacy Institute  
University of San Diego School of Law

Michael W. Flynn  
Associate Dean for Academic Affairs  
Associate Clinical Professor of Law  
Santa Clara University School of Law

Susan Freiwald  
Interim Dean  
Professor of Law  
University of San Francisco School of Law

Jacob Goldin  
Assistant Professor of Law  
Stanford Law School

Robert W. Gordon  
Professor of Law  
Stanford Law School

Thomas C. Grey  
Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, Emeritus  
Stanford Law School
Joseph R. Grodin  
Distinguished Emeritus Professor of Law  
University of California, Hastings College of the Law

Ariela J. Gross  
John B. and Alice R. Sharp Professor of Law and History  
Co-Director, Center for Law, History, and Culture  
University of Southern California Gould School of Law

Cindy Guyer  
Adjunct Assistant Professor of Law  
University of Southern California Gould School of Law

Brooke Harris  
Adjunct Professor of Law  
Loyola Law School, Los Angeles

Christopher Hawthorne  
Clinical Professor of Law  
Director, Juvenile Innocence & Fair Sentencing Clinic  
Loyola Law School, Los Angeles

Tim Iglesias  
Professor of Law  
University of San Francisco School of Law

Leslie Gielow Jacobs  
Professor of Law  
Director, Capital Center for Law & Policy  
University of the Pacific McGeorge School of Law

David Kaye  
Clinical Professor of Law  
Director, International Justice Clinic  
University of California, Irvine School of Law

Mark G. Kelman  
Vice Dean  
James C. Gaither Professor of Law  
Stanford Law School

Sean Kennedy  
Associate Clinical Professor of Law  
Kaplan & Feldman Executive Director, Center for Juvenile Law & Policy  
Loyola Law School, Los Angeles
Maureen Kildee
Lecturer in Law
Staff Attorney and Clinical Supervisor, Clean Slate Practice, East Bay Community Law Center
University of California, Berkeley School of Law

William S. Koski
Eric and Nancy Wright Professor of Clinical Education
Professor of Law
Director, Youth and Education Law Project
Stanford Law School

Ellen Kreitzberg
Professor of Law
Director, Center for Social Justice and Public Service
Santa Clara University School of Law

Máximo Langer
Professor of Law
Faculty Director, Criminal Justice Program
UCLA School of Law

Kevin Lapp
Professor of Law
Loyola Law School, Los Angeles

Richard A. Leo
Hamill Family Chair Professor of Law and Social Psychology
Dean's Circle Scholar
University of San Francisco School of Law

Laurie Levenson
Professor of Law
David W. Burcham Chair in Ethical Advocacy
Loyola Law School, Los Angeles

Erin Levine
Lecturer in Law
University of California, Berkeley School of Law

Martin Levine
Professor of Law
UPS Foundation Chair in Law and Gerontology
University of Southern California Gould School of Law
Gerald P. López  
Professor of Law  
UCLA School of Law  

Suzanne A. Luban  
Lecturer in Law  
Clinical Supervising Attorney, Criminal Defense Clinic  
Stanford Law School  

Lawrence C. Marshall  
Professor of Law  
Stanford Law School  

Barry P. McDonald  
2018-2019 Straus Research Professor of Law  
Pepperdine University School of Law  

Jennifer B. Mertus  
Adjunct Professor, Law School  
Director, Center for Children and Families  
Whittier College  

Kathryn E. Miller  
Lecturer in Law  
2018-19 Stevens Family Clinical Supervising Attorney  
University of California, Berkeley School of Law  

David Mills  
Professor of the Practice of Law  
Senior Lecturer in Law  
Stanford Law School  

Saira Mohamed  
Professor of Law  
University of California, Berkeley School of Law  

Mary-Beth Moylan  
Associate Dean of Experiential Learning  
Professor of Lawyering Skills  
University of the Pacific McGeorge School of Law  

John E. B. Myers  
Professor of Law  
University of the Pacific McGeorge School of Law  
Visiting Professor of Law  
University of California, Hastings College of the Law
Jyoti Nanda
Binder Clinical Teaching Fellow
Founder, Youth & Justice Clinic
UCLA School of Law

Alexandra Natapoff
Professor of Law
University of California, Irvine School of Law

Michelle Oberman
Katharine and George Alexander Professor of Law
Santa Clara University School of Law

Seema N. Patel
Lecturer in Law
Clinical Director, East Bay Community Law Center
University of California, Berkeley School of Law

Samuel H. Pillsbury
Professor of Law
Frederick J. Lower Fellow
Loyola Law School, Los Angeles

Claudia Polsky
Assistant Clinical Professor of Law
Director, Environmental Law Clinic
University of California, Berkeley School of Law

Andrea Ramos
Clinical Professor of Law
Director, Immigration Law Clinic
Southwestern Law School

Jean Lantz Reisz
Adjunct Assistant Professor of Law
Supervising Attorney, Immigration Clinic
University of Southern California Gould School of Law

Deborah L. Rhode
E.W. McFarland Professor of Law
Director, Center on the Legal Profession
Stanford Law School
L. Song Richardson
Dean
Chancellor’s Professor of Law
University of California, Irvine School of Law

Kathleen M. Ridolfi
Professor of Law
Santa Clara University School of Law

Laura Riley
Adjunct Assistant Professor of Law
Director of Experiential Learning
University of Southern California Gould School of Law

Francisco Rivera Juaristi
Associate Clinical Professor
Director, International Human Rights Clinic
Santa Clara University School of Law

Michael Romano
Lecturer in Law
Director, Three Strikes Project
Stanford Law School

Leslie Rose
Professor Emerita
Golden Gate University School of Law

Heidi Rummel
Clinical Professor of Law
Director, Post-Conviction Justice Project
University of Southern California Gould School of Law

Margaret M. Russell
Associate Professor of Law
Santa Clara University School of Law

Emily Ryo
Associate Professor of Law and Sociology
University of Southern California Gould School of Law

Thomas A. Schaaf
Associate Professor of Law
Golden Gate University School of Law
**Wendy M. Seiden**  
Clinical Professor of Law  
Co-Director, Bette & Wylie Aitken Family Protection Clinic  
Chapman University Fowler School of Law

**Jeffrey Selbin**  
Clinical Professor of Law  
Faculty Director, Policy Advocacy Clinic  
University of California, Berkeley School of Law

**Elisabeth Semel**  
Clinical Professor of Law  
Director, Death Penalty Clinic  
Director of Clinical Programs  
University of California, Berkeley School of Law

**Dan Simon**  
Richard L. and Maria B. Crutcher Professor of Law & Psychology  
University of Southern California Gould School of Law

**Jonathan Simon**  
Lance Robbins Professor of Criminal Justice Law  
Faculty Director, Center for the Study of Law & Society  
University of California, Berkeley School of Law

**Kenneth W. Simons**  
Chancellor’s Professor of Law  
University of California, Irvine School of Law

**Stephen E. Smith**  
Associate Clinical Professor  
Santa Clara University School of Law

**Ji Seon Song**  
Lecturer in Law  
Thomas C. Grey Fellow  
Stanford Law School

**Cancion Sotorosen**  
Lecturer in Law  
Staff Attorney/Clinical Supervisor, Youth Defender Clinic, East Bay Community Law Center  
University of California, Berkeley School of Law

**Norman W. Spaulding**  
Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law  
Stanford Law School
Marcy Strauss  
Professor of Law  
Loyola Law School, Los Angeles

Katharine Tinto  
Clinical Professor of Law  
Director, Criminal Justice Clinic  
University of California, Irvine School of Law

Ronald C. Tyler  
Professor of Law  
Director, Criminal Defense Clinic  
Stanford Law School

Rachel Van Cleave  
Former Dean  
Professor of Law  
Golden Gate University School of Law

Michael S. Wald  
Jackson Eli Reynolds Professor of Law, Emeritus  
Stanford Law School

Julie K. Waterstone  
Associate Dean for Experiential Learning  
Clinical Professor of Law  
Director, Children’s Rights Clinic  
Southwestern Law School

Robert Weisberg  
Edwin. E. Huddleson, Jr. Professor of Law  
Faculty Co-Director, Stanford Criminal Justice Center  
Stanford Law School

Lois A. Weithorn  
Professor of Law  
Harry & Lillian Hastings Research Chair  
University of California, Hastings College of the Law

Eric W. Wright  
Professor of Law  
Santa Clara University School of Law
Nancy Wright
Professor Emeritus
Santa Clara University School of Law

Mark Yates
Associate Dean of Academic Affairs
Professor of Law
Golden Gate University School of Law