

CONSTITUTIONALITY OF SENATE BILL 1391  
*White Paper From California Legal Scholars*  
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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”<sup>1</sup> and must be upheld “unless [its] unconstitutionality clearly, positively and unmistakably appears.”<sup>2</sup> 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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<sup>1</sup> *Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, 1119 (2004).

<sup>2</sup> *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.<sup>3</sup>

**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[.]”<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> The California Supreme Court has recognized that Prop. 57 was meant to create an “ameliorative change to the criminal law . . .

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<sup>3</sup> See Assem. Bill No. 560 (1993-1994 Reg. Sess.) as amended Aug. 26, 1994.

<sup>4</sup> Proposition 57, Section 5.

<sup>5</sup> See *Amwest Sur. Ins. Co. v. Wilson*, 11 Cal.4th 1243, 1256 (1995).

<sup>6</sup> 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.”).

<sup>7</sup> *People v. Vela*, 21 Cal.App.5th 1099, 1107 (2018).

intended to extend as broadly as possible,” including to “ameliorate the possible punishment for a class of persons, namely juveniles.”<sup>8</sup>

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.”<sup>9</sup>

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,”<sup>10</sup> 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.”<sup>11</sup> 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.”<sup>12</sup> These results follow from the reality, documented in growing cognitive research, that young people are less culpable and are especially good candidates for rehabilitation.<sup>13</sup>

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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<sup>8</sup> *People v. Superior Court (Lara)*, 4 Cal.5th 299, 309 (2018).

<sup>9</sup> Proposition 57, Purpose and Intent.

<sup>10</sup> 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).

<sup>11</sup> Voter Information Guide, *supra*, argument in favor of Prop. 57, p. 58.

<sup>12</sup> Hahn et. al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, Dep. of Health & Human Servs., Centers for Disease Control & Prevention (CDC), Nov. 2007 at 6-9.

<sup>13</sup> *See, e.g.,* Beatriz Luna, *The Relevance of Immaturities in the Juvenile Brain to Culpability and Rehabilitation*, 63 *Hastings Law J.* 1469 (2012), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5662008/>.

who commit crimes are very capable of change.”<sup>14</sup> This is the same research on which the U.S. Supreme Court has relied in placing constitutional limits on punishment for youths.<sup>15</sup>

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.”<sup>16</sup>

**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.”<sup>17</sup> 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.<sup>18</sup>

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<sup>14</sup> Assem. Com. on Public Safety, Analysis of Senate Bill No. 1391 (2018 Reg. Sess.) June 26, 2018.

<sup>15</sup> See, e.g., *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>16</sup> Official Voter Information Guide, p. 58, Aug. 15, 2016.

<sup>17</sup> *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”).

<sup>18</sup> 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.<sup>19</sup> 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,<sup>20</sup>

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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”).

<sup>19</sup> Proposition 21, Section 4.

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