

S259011

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

O.G.

Petitioner,

vs.

THE SUPERIOR COURT OF VENTURA CO.

Respondent;

THE PEOPLE OF THE STATE OF CALIFORNIA

Real Party in Interest.

On Review From The Court Of Appeal, Second Appellate District
Division Six, No. B295555

After An Appeal From The Ventura County Superior Court
Case No. 2018017144

AMICUS BRIEF IN SUPPORT OF PETITIONER O.G.

William D. Temko (State Bar No. 98858)
william.temko@mto.com

*Sara A. McDermott (State Bar No. 307564)
Sara.McDermott@mto.com

MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone:(213) 683-9100
Facsimile: (213) 687-3702

*Attorneys for Human Rights Watch, the Anti-Recidivism Coalition, and the
W. Haywood Burns Institute*

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INTRODUCTION

Proposition 57 represented an intentional rejection of California's "tough on crime" approach that dominated in the last decades of the 20th century. Proposition 57 passed as an ameliorative measure, aimed at reducing the number of young people tried in adult court and increasing the number of young people receiving rehabilitative services and treatment in the juvenile system.

This historical context is important: In 2000, California voters had passed Proposition 21, which increased punishments for various crimes and required youth 14 and older who were charged with murder and certain sex offenses to be tried as adults. Proposition 21 gave prosecutors the power to file juvenile cases directly in adult criminal court. Proposition 21 reflected a popular sentiment at the time, consistent with the position of Real Party in Interest the Ventura County District Attorney in this appeal, who asserts in his Answering Brief that a "longer period of incarceration" for certain 14- and 15-year-olds "would more adequately protect the community"

But in the years after Proposition 21 passed, California shifted to embrace a rehabilitative, rather than punitive,

approach to youth crime. Lawmakers mitigated the impact of harsh sentences and created opportunities for community reintegration by offering the possibility of parole to even those with the harshest sentences, beginning with the passage of Senate Bill (SB) 9. The Legislature also passed a series of youth justice reform measures designed to keep youth out of the justice system generally (and the adult system in particular), to shorten the amount of time youth spend in detention, and to facilitate reentry into society.

By 2016, the voters demanded reform: Proposition 21's punitive approach was no longer in keeping with attitudes toward youth crime. Proposition 57 rescinded prosecutors' power to file juvenile cases directly in adult criminal court. In response to its passage, the San Francisco Chronicle declared, "Now, California's mass transfer of children to adult courts — where they faced the prospect of longer sentences and less rehabilitation — has been all but abandoned by voters and lawmakers."¹

¹ Evan Sernoffksy & Joaquin Palomino, *Vanishing Violence: Locked Up, Left Behind*, San Francisco Chronicle (Oct. 3, 2019), <https://www.sfchronicle.com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php>.

Proposition 57 reflected a public will to cut back on youth incarceration, to keep youth out of adult prisons and to reduce the extended sentences they would face there. In passing Proposition 57, California voters not only endorsed, but also expanded, the State's extraordinary shift toward a more rehabilitative approach. The voters recognized what the Real Party in Interest does not: That achieving true public safety requires a more complex, compassionate approach than simply locking young people away for decades on end. By prioritizing the rehabilitation and reintegration of young people, Proposition 57 creates safer communities for all Californians.

Just two years later, the legislature passed SB 1391, a bill designed to remove prosecutors' authority to seek transfer of 14 and 15 year-olds to adult court. In practical effect, this bill furthers the stated purposes of Proposition 57, including emphasizing rehabilitation for juveniles and protecting and enhancing public safety. SB 1391 also ensures that Proposition 57's purposes are achieved equitably in populations across the state, including among Black and Latino communities.

ARGUMENT

In evaluating whether a bill is a valid amendment to an initiative, the Court “start[s] with the presumption that the Legislature acted within its authority” and “shall uphold the validity” of the amendment “if, by any reasonable construction, it can be said that the statute furthers the purposes” of the initiative. *Amwest Sur. Ins. Co. v. Wilson*, 11 Cal. 4th 1243, 1256 (1995). When considering the constitutionality of a legislative act, “the presumption is in favor of constitutionality, and the invalidity of the legislation must be clear before it can be declared unconstitutional.” *Dittus v. Cranston*, 53 Cal. 2d 284, 286 (1959).

Evidence of an initiative’s purposes “may be drawn from many sources, including” the initiative’s express statement of purpose, “the historical context of the amendment, and the ballot arguments favoring the measure.” *California Hous. Fin. Agency v. Patitucci*, 22 Cal. 3d 171, 177 (1978). Other briefs in this appeal describe how SB 1391 is consistent with the purposes of Proposition 57, as derived from its historical context. *See, e.g.*, Brief of Amici Curiae Pacific Juvenile Defender Center and Independent Juvenile Defender Program (filed June 15, 2020).

But in its empirically demonstrable effects, SB 1391 also furthers the express purposes of Proposition 57.

Empirical evidence shows that SB 1391 furthers two of those purposes in particular: (1) emphasizing rehabilitation, especially for youth, and (2) protecting and enhancing public safety. *See Voter Information Guide, Gen. Election (Nov. 8, 2016) text of Prop. 57, § 2, p. 141.* As will be described in more detail below, SB 1391's ban on transferring 14 and 15 year-olds to adult court ensures those young people receive much-needed rehabilitative services in the juvenile system, a system which is better equipped to handle their high needs. The ban on transferring 14- and 15-year-olds to adult court also protects public safety by reducing recidivism and strengthening family and community bonds. And SB 1391 pushes those purposes further, beyond what Proposition 57 was able to accomplish on its own, by ensuring that those purposes are achieved equitably in communities across the state—including in Black and Latino communities, which are disproportionately burdened by juvenile transfers.

Both the historical context in which Proposition 57 was passed and its express, stated purposes demonstrate that

Proposition 57 aimed to change the way California treats young people who commit crimes: Proposition 57 shifted the state from a punitive approach to a rehabilitative approach—a shift undoubtedly furthered by SB 1391. The Legislature understood the likely practical effects of SB 1391 when it passed that legislation, and it acted with the purpose of increasing rehabilitative opportunities for youth and ensuring the safety of their communities. Given this context, it was reasonable for the Legislature to conclude that SB 1391 would ensure that Proposition 57’s purposes are accomplished equally across California’s communities, including communities of color.

I. Keeping 14- and 15-Year-Olds in the Juvenile System Ensures They Are Afforded Age-Appropriate Rehabilitation.

A. Scientific Research Proves That the Juvenile Justice System’s Rehabilitative Approach Works.

In the decades since California first began allowing transfer of 14- and 15-year-olds to the adult system, there have been considerable developments in the neuroscientific research on adolescent development and receptivity to rehabilitation. That research has been described in great detail elsewhere—including in the U.S. Supreme Court’s decisions in *Graham v. Florida*, 560

U.S. 48, 68 (2010), and *Miller v. Alabama*, 567 U.S. 460, 471–73 (2012), and this Court’s decision in *People v. Caballero*, 55 Cal. 4th 262 (2012)—and, in essence, reflects a growing understanding that young people are simultaneously more impulsive and more capable of reform than adults. *See, e.g., Graham*, 560 U.S. at 72 (explaining youth “are less likely to take a possible punishment into consideration when making decisions”); *Caballero*, 55 Cal. 4th at 266 (explaining “juveniles are [also] more capable of change than are adults”). Those scientific developments have not only impacted California’s sentencing practices, they have also shaped the programming and services provided to youth in California’s juvenile facilities.

The implications of these scientific developments are even more stark for 14- and 15-year-olds. Compared to 16- and 17-year-olds, 14- and 15-year-olds are more vulnerable to risky behavior; less able to control their impulses; and have a lesser ability to understand risk, or to think about the future and anticipate consequences of decisions.² Much adolescent illegal

² Laurence Steinberg, et al., *Age Differences in Future Orientation*

activity is an extension of these youthful characteristics, because risk-taking behaviors are a part of youth identity formation. As they mature, however, most young people grow out of these behaviors—particularly if they are afforded appropriate developmental interventions and support.³

Youth involved in the juvenile justice system also have particularly acute mental healthcare needs, including extremely high rates of trauma and mental illness: One study, for example, found that nearly two thirds of males and three quarters of females in the juvenile justice system met diagnostic criteria for one or more psychiatric disorders.⁴ A multi-state study by the National Center for Mental Health and Juvenile Justice found

and Delay Discounting, 80 *Child Development* 28 (Jan./Feb. 2009), available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.537.1994&rep=rep1&type=pdf>.

³ Richard J. Bonnie, et al., *Reforming Juvenile Justice: A Developmental Approach*, National Research Council 120 (2013), available at <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

⁴ Linda A. Teplin, et al., *Psychiatric Disorders in Youth in Juvenile Detention*, 59 *Arch. Gen. Psychiatry* 1133 (Dec. 2002), available at https://www.researchgate.net/profile/Gary_McClelland2/publication/11001877_Psychiatric_Disorders_in_Youth_in_Juvenile_Detention/links/0deec5277f3016ede7000000.pdf.

that 70 percent of youth in the juvenile justice system have at least one diagnosable mental health disorder—as compared with only 20 percent of youth in the community.⁵ Of those youth diagnosed with at least one disorder, 60 percent also met the criteria for three or more disorders.⁶ California’s juvenile system is designed to address the particularized rehabilitative needs of youth who commit crimes—including very serious crimes—and it offers services that are geared towards young people’s rehabilitation. Those include developmentally appropriate mental health services, education, and occupational training, which the juvenile system *requires* juvenile facilities to provide, and which are largely unavailable in the adult system.

Studies affirm that juvenile facilities generally offer more meaningful opportunities for rehabilitation than adult prison. Youth held in juvenile facilities report counseling and other rehabilitative services supported them in learning pro-social

⁵ Development Services Group, Inc., *Intersection Between Mental Health and the Juvenile Justice System*, Office of Juvenile Justice and Delinquency Prevention (July 2017), *available at* <https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf>.

⁶ *Id.*

behaviors, understanding the consequences of rule breaking, and deepened their understanding of their problems.⁷ Juvenile facilities generally are treatment-oriented, and adhere to a therapeutic approach to rehabilitation.

California's Board of State and Community Corrections is charged with adopting "minimum standards for the operation and maintenance of juvenile halls," California Welfare & Institutions Code section 210, and those standards are consistent with researchers' observations. They require, for example, an assessment upon entry, identifying "the youth's risk factors, needs and strengths including, but not limited to, identification of substance abuse history, educational, vocational, counseling, behavioral health, consideration of known history of trauma, and family strengths and needs." Cal. Code Regs. tit. 15, § 1355(a). For youth held in a juvenile institution for 30 days or more, the institution is required to, among other things, develop a plan for resolving problems identified in the assessment, and a time

⁷ Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention 7 (June 2010) (hereinafter, "*Juvenile Transfer Laws*"), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

frame for meeting the plan’s objectives. *Id.* § 1355(b). Youth held in juvenile facilities are entitled to age-appropriate, culturally responsive and trauma-informed educational approaches, *id.* § 1370(a), and evidence-based, pro-social daily programming designed to reduce recidivism, *id.* § 1371(a). California’s juvenile facilities focus on rehabilitation via age-appropriate interventions, designed to promote a healthy transition to adulthood.

Few, if any, of these interventions are available in the adult system. In 2013, at the request of the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP), the National Research Council published a report reviewing advances in youth-focused behavioral and neuroscience research and evaluating the extent to which juvenile justice approaches have evolved in response.⁸ That report characterized adult prisons “as developmentally toxic settings for adolescents,” which “contain none of the attributes of a social environment that

⁸ See Richard J. Bonnie, et al., *Reforming Juvenile Justice: A Developmental Approach*, National Research Council (2013), available at <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

are likely to facilitate youthful progress toward completion of the developmental tasks that are important to functioning as law-abiding adults.”⁹

In an adult prison environment, young people must focus on surviving. They are at greater risk of being sexually assaulted by other prisoners and staff.¹⁰ Young people are also favored recruiting targets for gangs, which prey on fear and strategically recruit the youngest people in the prison. One former gang leader and recruiter, John. D., explains: “The process, it is not only purposeful, it is diabolical.” Sophisticated recruitment tactics focus on young men who are isolated, John explains, and “the most prized are . . . young men that don’t have any family, or really any friends” As a recruiter, John said he knew vulnerable youth would be particularly susceptible to

⁹ *Id.* at 134. Note that the term “adolescent,” as used above, is broader than the term “juvenile”: “The science of adolescence refers to a phase in development between childhood and adulthood beginning at puberty, typically about 12 or 13 and ending in the late teens or early 20s.” *Id.* at 18.

¹⁰ National Prison Rape Elimination Commission Report 7 (June 2009), available at <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

manipulation and described his goal as to “brainwash and indoctrinate them into [the gang’s] belief system.”¹¹

In the juvenile system, youth are safer. They are able to focus on the more robust rehabilitation and educational offerings available in the juvenile system, at a time when they are most susceptible to intervention. Juvenile facilities are demonstrably better equipped to achieve Proposition 57’s rehabilitative goals for young people.

B. The Lived Experiences of Young People in the Juvenile Justice System Confirm the Research: The Juvenile System’s Rehabilitative Approach Works Better Than Punitive Incarceration

The experiences of young people held in the juvenile justice system confirm its rehabilitative potential. Young people who are afforded access to counseling, mentoring, and education in the juvenile justice system go on to earn college degrees, obtain meaningful careers, and in many cases find a passion for public service. By contrast, youth sentenced to long terms in the adult

¹¹ Human Rights Watch interview with John D. (pseudonym) (May 2, 2018). John D. spent more than two decades in California State prisons.

prison system struggle to find resources and support for rehabilitation.

1. Miguel Garcia¹²

At age 15, Miguel Garcia was accused of attempted murder. Charged as an adult, he faced life in prison. “My mom cashed in her 401k to get me an attorney,” he remembers, and that attorney got him a deal to move the case back to juvenile court. Committed to the state’s Division of Juvenile Justice, he was surprised to find that “there were programs there that I was actually excited about.” He became involved in so many activities that staff advised him to slow down. The programming was life-altering. “I received counseling, and I unpacked my own pain, anger, and sadness. I was mentored. I began to understand how my actions impacted others. I was required to be in school and found I loved it.”

Following his release, Miguel enrolled at the University of California, Riverside. Now, at 27 years old, Miguel has graduated, with a degree in political science. He earned his degree while working two and sometimes three jobs. He has

¹² Human Rights Watch Interview with Miguel Garcia (July 4, 2018) (updated via email August 1, 2020).

volunteered with at-risk youth, interned with a member of the California State Assembly, is a consultant for the Annie E. Casey Juvenile Justice Strategy Group Youth Advisory Council and Northwestern University's Center for Child Trauma, Assessment, Services and Intervention, and works full time as a policy associate for a criminal justice reform organization. In July, he took the LSAT. He plans to enter law school next year. "My goal is to be a public defender. I want to represent young people in trouble, and do my best to give them hope and the chance to grow and change."

2. *"Joshua"*¹³

When Joshua entered juvenile hall at age 14, he had never been in trouble before. He was the youngest person on the unit. The year before, his mother, Linda, had become worried about her son's mental health. She got him into counseling, took him to psychiatrists, doctors, and others for assessment, and asked the

¹³ Human Rights Watch telephone interview with Linda (July 31, 2020). The names Joshua and Linda are pseudonyms. Joshua is still in prison and amici are concerned about the highly personal nature of this information and possible retaliation in prison if his identity were revealed.

school for help. But at every turn, she hit a dead end: “I couldn’t get him the help he needed,” she said.

Meanwhile, Joshua’s mental health worsened. He began skipping school, and, as Linda soon learned, hanging out with adult gang members. One day, instead of going to his scheduled counseling session, Joshua got into a car with a 27-year-old and another teen. One of the other people in the car shot and killed a man. Although Joshua was 14 years old, was not the shooter, and acted under the influence of his 27-year-old codefendant, he was tried as an adult. He was convicted of murder and sentenced to 50-years-to-life in adult prison.

Joshua remained in the juvenile justice system until he turned 18. While in juvenile hall, he received age-appropriate treatment and started on medications that helped his mental condition. When he turned 18, however, he was moved to an adult prison. Since then, any mental health treatment has been sporadic at best. Joshua’s condition worsened, and he became deeply depressed. Then, he began hearing voices.

Eventually, Joshua was transferred to a prison psychiatric unit, where he was prescribed the right combination of medication for his condition. His behavior improved, which

allowed him to be transferred to a lower security yard. But there—for unknown reasons—he stopped receiving the medication.

Joshua deteriorated. He started talking to himself, and his erratic behavior created problems on the prison yard. Last year, he was badly assaulted, which resulted in him being moved to another prison. Despite his behavior's origin in his mental health condition, Joshua is now back in a maximum security unit. There, a psychiatrist has reinstated his medication.

“I am hopeful that things will be better,” says Linda. But if Joshua had been retained in the juvenile system, the state would have had 11 years within which to offer age-appropriate mental health treatment and medication. Joshua's responsiveness to even inconsistently offered medication in prison indicates that he would have benefited from better treatment in the juvenile system—and perhaps by now, he could have been stabilized and successfully reintegrated into the community.

3. *Robert Garcia*¹⁴

Youth who are prosecuted as adults usually spend some period of time in juvenile hall before being sent to adult prison. For these youth, the juxtaposition of the two systems is jarring.

Robert Garcia was 16 at the time of his crime, but the psychiatrist's report to court described him as "very naïve and immature," with the mental and emotional development of an eight- or nine-year-old. Nevertheless, the juvenile court judge transferred Robert to adult court. There, he was sentenced to 25-years-to-life. "I got just a glimpse of what [the services and treatment of the juvenile system] could have meant in my life because I was held in juvenile hall pending the outcome of my case..." he remembers. "I was treated as a kid with problems, problems that had solutions. It felt like my life was turning around. But then I was sent to adult prison."¹⁵

¹⁴ Psychiatrist's report to court, on file with Human Rights Watch.

¹⁵ *Futures Denied*, Human Rights Watch 23, 31 (Aug. 2018) (citing Testimony of Robert Garcia before the California State Senate Public Safety Committee (May 12, 2015)), available at https://www.hrw.org/sites/default/files/supporting_resources/futures_denied.pdf.

As Robert testified before the California State Senate Public Safety Committee,

I remember vividly that first day [in prison.] I was given a bed roll, a prison uniform, toothbrush, and soap. I struggled to carry it all as I was led to the prison unit where I would be housed. Looking up at the tiers of cells, men with big mustaches stared out at me. Men working out, with their shirts off and gang tattoos prominently displayed, looked me over. They seemed big, and I felt really small. One called me over and asked what gang I was with. It was clear: I was small, inexperienced, and without friends in a brutal place. I needed protection. I succumbed to those pressures and for nearly 10 years in prison my life spiraled down.

4. *Daniel Mendoza*¹⁶

“I know all young people have the potential to change. They just need what I got,” says Daniel Mendoza, who was involved in a murder at only 14. Although he faced adult court prosecution

¹⁶ Human Rights Watch Telephone Interview with Daniel Mendoza (August 2, 2020).

and a life sentence, a turn of events allowed his case to remain in the juvenile system. He was held in a local juvenile facility for his entire commitment, not sent to the state Division of Juvenile Justice, as would be more typical for someone involved in such a serious crime. Daniel explains, “The juvenile system gave me opportunities that were integral to my growth.”

Daniel says the juvenile system fostered his love for education. After serving his sentence, he enrolled in college, earning a bachelor’s degree in Chicano/a Studies from the University of California at Davis. Since then, he has been involved with policy reform on issues such as ending the use of solitary confinement and improving re-entry services for formerly incarcerated individuals. Daniel was recognized for his leadership by the University of California Davis Office of Research and Policy for Equity in 2018, when he was awarded the Brandon Harrison Youth Leader/Youth Organizer Award. Daniel is now a data analyst fellow for an organization in Stockton, where he co-leads voter engagement campaigns and conducts research projects around social, political, and environmental issues.

* * *

The evidence is clear: California’s juvenile justice system is better equipped to rehabilitate young people than its adult prison system. This is particularly so for 14- and 15-year-olds, who are less mature and therefore stand to benefit more from the therapeutic interventions available in the juvenile system. By depriving prosecutors of the opportunity to seek transfer of 14- and 15-year-olds to the adult system, SB 1391 demonstrably furthers Proposition 57’s overall goal of emphasizing rehabilitation, particularly among juveniles.

II. Keeping 14- and 15-Year-Olds in the Juvenile Justice System Also Protects and Enhances Public Safety.

In his answering brief, Real Party in Interest the Ventura County District Attorney baldly argues that a “longer period of incarceration” for certain 14- and 15-year-olds “would more adequately protect the community and provide more time for rehabilitative programming.” (Answering Br. at 43.) Neither the empirical evidence nor the lived experiences of justice-involved youth support this audacious claim. As the previous section demonstrates, more “time” for rehabilitative programming does not guarantee that programming will be *available* in adult prison, let alone youth-appropriate. Meanwhile, the communities

incarcerated youth have left behind suffer without the positive contributions that young adults often make following rehabilitation in juvenile facilities. The Ventura County District Attorney’s view of “public safety” is not only outdated and cruel, it is empirically incorrect. Faced with the evidence that rehabilitating 14- and 15-year-olds in the juvenile system improves public safety, the Legislature made the reasonable determination that SB 1391 furthered the purposes of Proposition 57.

A. Scientific Research on Recidivism Proves That Keeping Young People in the Juvenile Justice System Improves Public Safety Outcomes

The idea that keeping young people in juvenile facilities ultimately promotes public safety by reducing recidivism is so well-established that it was expressly described in the ballot materials for Proposition 57: “[E]vidence shows that minors who remain under juvenile court supervision are less likely to commit new crimes. . . . Prop. 57 focuses our system on evidence-based rehabilitation for juveniles and adults because it is better for public safety than our current system.” Voter Information Guide, Gen. Election (Nov. 8, 2016), Arguments at 58.

The scientific research agrees. As early as 2007, the Centers for Disease Control and Prevention (CDC) conducted a systematic literature review concerning the effectiveness of juvenile transfer in reducing violence among youth.¹⁷ That review concluded, in part, that “transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth.”¹⁸

Researchers in 2010 reached a similar conclusion after reviewing six large-scale studies focused on the deterrent effects of transfer.¹⁹ One of those studies found that youth transferred to adult court “were twice as likely to be rearrested and were rearrested more quickly (and often for more serious offenses) upon their return to the community, than youth who were retained in the juvenile justice system during the same period.”²⁰

¹⁷ Centers for Disease Control and Prevention, *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*, 56 *Morbidity and Mortality Weekly Report* (Nov. 30, 2007), available at <https://stacks.cdc.gov/view/cdc/6911>.

¹⁸ *Id.* at 1.

¹⁹ Redding, *Juvenile Transfer Laws*, at 1.

²⁰ *Id.* at 4.

Another study found that youth adjudicated in the juvenile system were nearly 30% less likely to be arrested again than those youth tried in adult court.²¹ Ultimately, all six studies supported the same conclusion: “[T]ransferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism.”²²

The science on youth development helps explain why the juvenile system is so much more effective in reducing recidivism among young people: In the juvenile system, youth are afforded the opportunity to develop appropriate decisionmaking skills in a supportive, therapeutic environment.

Young people’s immaturity also means they will not be deterred by the possibility of prosecution in the adult system. They have a greater tendency to focus on the short-term benefits of their choices, reducing the likelihood that they will perceive the substantial risk of being arrested or punished as an adult. Nor is the juvenile brain sufficiently developed to make rational

²¹ *Id.*

²² *Id.* at 6.

choices when actually confronted by the possibility of adult prison time.

One example is Carlos Sanchez.²³ Carlos was tried as an adult on conspiracy murder charges, for a shoot-out with rival gangs that he took part in at 15 years old. Sanchez recalls standing next to his attorney in court when he and his brother, who was 19 at the time of the crime, were found guilty. “I looked over and saw my brother was crying. I said to him, ‘Hey don’t worry, we’re going to be alright.’ My brother was older than me, and he could comprehend it. He looked at me and said, ‘Bro, we’re going to go away for the rest of our lives.’ I didn’t really believe it.” His mother fell to her knees in the courtroom and wailed. “[They] understood what it meant. I didn’t, or I would have been crying my brains out, too.”

Carlos had been offered a plea deal of 12 years, but instead of taking it, he went to trial with his 19-year-old brother and a 38-year-old codefendant. His public defender begged him to take the deal—but at such a young age, he could not understand the

²³ Human Rights Watch telephone interview with Carlos Sanchez (July 31, 2020). Carlos’ story is described in more detail *infra*, in Section B.1.

consequences of refusing it. He incorrectly assumed that he would be sentenced to the juvenile justice system. In 2014, Carlos found himself back in court on what turned out to be a futile attempt to reduce his sentence. He recalls that the judge said, “You were a big idiot for not taking the deal you were offered at trial.” What the judge failed to recognize is that it was not about being an idiot. It was about being too young to understand.

For 14- and 15-year-olds who find themselves facing the possibility of transfer to the adult system, the transfer process itself can be counterproductive. The prospect of transfer encourages them to focus on becoming “strong” or “hard” to survive adult prison, rather than focusing on their schooling, counseling, or other rehabilitative services. Understandably, some young people facing the possibility of adult prison time give up. They see themselves as criminals, shaping their identity and behavior to fit the system’s expectation. Daniel Mendoza remembers: “Every time I went to court, I listened to people talk about me. The DA said I was “incorrigible.”²⁴ They said I was a “hardened criminal” and that my behavior stemmed from being a

²⁴ Human Rights Watch telephone interview with Daniel Mendoza (August 2, 2020).

“bad” kid. I was 14, and I barely knew the definition of the words they used to describe me. But the meaning was clear...I listened. I took it in. There was at least part of me that believed them.”

B. Removing Young People from Their Communities for Decades Leaves Those Communities Poorer in the Long Run—And Thus, Less Safe

Recidivism is not the only factor that affects public safety. When the state decides to take young people out of their communities, those communities also suffer. Young people who serve their sentences in the juvenile justice system frequently return to support their communities through nonprofit work, among other community-enriching endeavors.

1. Carlos Sanchez²⁵

During the years that young people spend in adult prison, after being convicted in adult court, the communities they came from lose their leadership, creativity, and the other positive contributions they could have made while they were locked up in prison. Carlos Sanchez is a prime example of what is lost during those years.

²⁵ Human Rights Watch telephone interview with Carlos Sanchez (July 31, 2020).

Carlos was sentenced to 45 years to life in prison for a crime he committed at age 15. His presumed parole hearing was not set to take place until he was in his 60s. Others in his situation might assume that a parole date some five decades away effectively gives them no incentive to try to turn their lives around. But Carlos chose a path of good behavior, self-improvement, and helping others while in prison. Carlos explains that his faith, and the support of a chaplain he met in juvenile hall who stuck by his side through two decades in prison, helped him survive. Pastoral counselor Mary Kay Kubota remembers, “Carlos [was] small for his age, with a slight build. I saw in him an unusual intensity for his age and [by the time he was 17] a true transformation from whoever that 15-year-old Carlos had been. [When I learned] his sentence would be 45-to-life...Thinking of it now, my heart still stops as if it were 20 something years ago.”²⁶

Carlos’ exemplary behavior in prison convinced Governor Jerry Brown to commute his sentence in 2018, and he was paroled through a Youth Offender Parole hearing nine months

²⁶ Human Rights Watch telephone interview and email correspondence with Mary Kay Kobuta (August 1, 2020).

ago. Currently living in Orange County, Carlos is working day jobs, hoping to attend college, and has volunteered feeding people who are homeless. “It feels good. It feels really good to be able to give back in this way. I know I can help make my community a better place.”

Carlos was incarcerated during historically high levels of overcrowding and violence in California prisons. The way in which he chose to conduct himself was not because of prison, but in spite of it. There is every indication that if he had instead been retained in the juvenile system and received education and services there, he would have returned to the community many years earlier and made important contributions. His incarceration for nearly 20 years should be understood as having harmed public safety, not helped it.

2. *Frankie Guzman*²⁷

Frankie Guzman’s life, by contrast, is a prime example of how youth who are kept in the juvenile system return to society and play critically important roles.

²⁷ Human Rights Watch email correspondence with Frankie Guzman (August 1, 2020).

Frankie was 15 when arrested for an armed robbery, and could have been tried as an adult. Instead, he was retained by juvenile court and committed to the state's juvenile prison, then known as the California Youth Authority (CYA). At CYA, Frankie was not a star. When released, he violated parole on four separate occasions. He was returned to CYA each time, adding three years to his commitment. However, with the passage of time, maturity, and his efforts to make use of CYA's education program, his focus changed. The last time he was released, Frankie enrolled in college, ultimately graduating from the University of California Berkeley with a bachelor's degree in English, and receiving a law degree from UCLA School of Law.

As a recipient of the prestigious Soros Justice Fellowship, among other awards, Frankie is now a nationally respected advocate on youth justice issues and the director of the National Center for Youth Law's Youth Justice Initiative. He has played leadership roles in numerous reforms that increase public safety. As just one example, Frankie recently advocated successfully for state funds, totaling nearly \$58 million, to assist local jurisdictions in providing evidence-based alternatives to incarceration for high-risk youth.

Reflecting on how he presented as a 15-year-old, Frankie says, “A lot of judges would have sent a kid like me straight to the adult system. If that had happened, I believe I would have experienced significant trauma, become involved in violent prison gang culture, and become [a] threat to myself and the community.” Instead, California is a safer place because of his leadership.

3. *Juan Carlos Orduna*²⁸

Young people who benefitted from SB 1391 have already begun giving back to their communities. Juan Carlos Orduna participated in a robbery at age 14, during the course of which a codefendant unexpectedly killed the victim. Juan Carlos was 15 years old when a judge transferred his case to adult court and he found himself facing a charge of murder under the felony murder rule. A conviction would have resulted in a life sentence. And Juan Carlos did not understand what was happening: “I didn’t understand anything about my case or what was happening. At all. Not one thing,” he remembers.

²⁸ Anti-Recidivism Coalition telephone interview with Juan Carlos Orduna (July 31, 2020).

Believing that he would never come home, Juan Carlos says he began to close himself off from the outside world. But in 2016, when Proposition 57 passed, Juan Carlos' transfer to the adult system was delayed. Then, when SB 1391 was enacted, his case was remanded to the juvenile court. Juan Carlos says that therapy and education in juvenile hall helped him understand the world around him, and why he had made the choices that landed him in juvenile hall. Schooling, in particular, made an impact on him. In school at the juvenile hall, he learned that he "was capable of doing something other than what I was taught before. I could be more than I had ever been told until then."

Now, at 20 years old, Juan Carlos is navigating reentry. He is a member of the Anti-Recidivism Coalition and is living in supportive housing. He has joined a labor union and begun working at a warehouse. "There are so many people inside who say that they want to do this or that, but you know they'll never have the chance, and suddenly I do." Juan Carlos wants to make good on that chance: "I just want a home and to be able to take care of myself and my family."

* * *

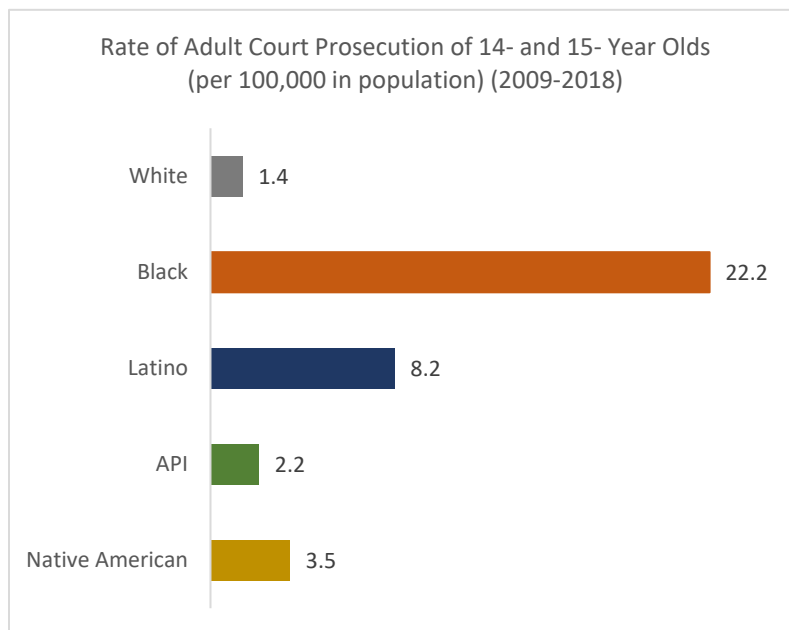
Public safety is an expansive ideal, with more complexities than the cramped stereotype reflected in Real Party in Interest’s Answering Brief. It requires consideration of what is lost when the State decides to lock a young person up—and also what is gained through rehabilitation, when that same young person is instead given the opportunity to heal and is equipped with the tools to make a difference in his or her community. In passing SB 1391, the Legislature wisely chose to keep the broader ideal in mind; it realized that ensuring 14- and 15-year-olds’ access to rehabilitative services in the juvenile justice system would ultimately make California a safer place for all.

III. Keeping 14- and 15-Year-Olds in the Juvenile System Ensures the Twin Goals of Reducing Recidivism and Promoting Public Safety Are More Equitably Achieved in Communities Across California

The two purposes of Proposition 57 that SB 1391 specifically furthers—rehabilitation and public safety—are particularly implicated for Black and Latino communities. Black and Latino youth are disproportionately targeted for transfer to the adult system, as compared to their white peers. As a result, Black and Latino 14- and 15-year-olds are afforded fewer opportunities for rehabilitation—and, over time, their

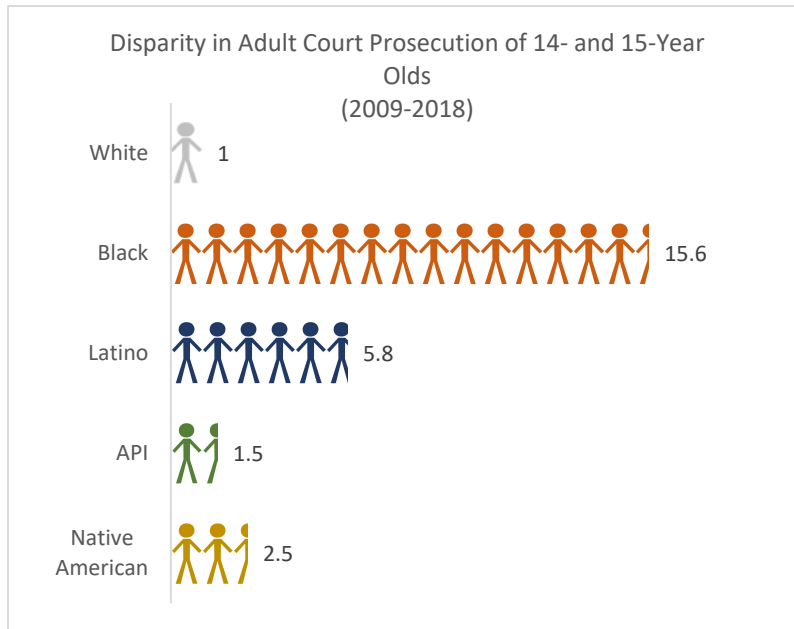
communities become comparatively poorer and less safe, as those young people are lost for decades to the adult prison system.

Data collected by the California Department of Justice show that Black and Latino youth age 15 and younger are transferred to adult court in shockingly high numbers, disproportionate to their representation in the justice system more generally. Disproportionate outcomes attach at all stages of the transfer process: In California, youth of color are significantly more likely than white youth to be prosecuted in adult court.



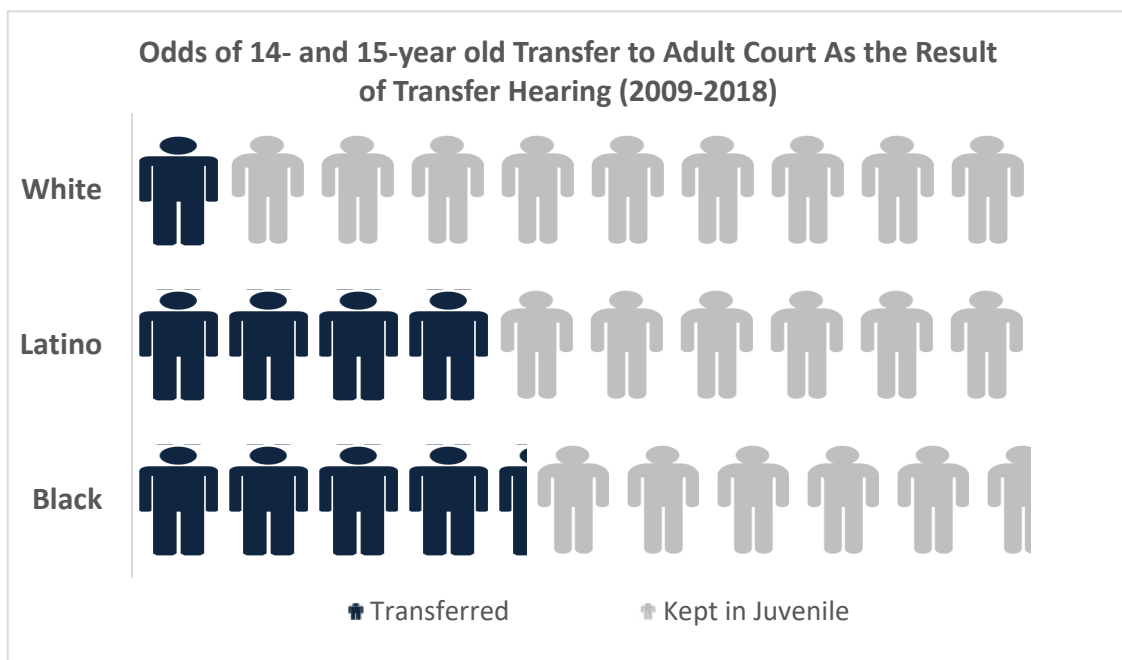
Over the past decade, for every one white 14- or 15-year-old prosecuted in adult court, there are nearly 16 Black youth and

nearly six Latino youth prosecuted as adults.²⁹ Put another way, Black 14- and 15-year olds are nearly 16 times as likely and Latino youth nearly six times as likely to be prosecuted in adult court.



²⁹ California Department of Justice (DOJ) Data, comprising direct file and transfer hearing statistics by county, race, ethnicity, gender, age, offense, and transfer hearing result for the years 2003–2018. Data sets provided to W. Haywood Burns Institute in November 2016, December 2017 and September 2019 by Office of the Attorney General, California Department of Justice (DOJ), comprising juvenile court petition, direct file and transfer hearing statistics by county, race, ethnicity, gender, age, offense, and transfer hearing result for the 2003-2018 period. Data referenced include all youth who were 14 and 15 years old at the time of referral to probation who were either directly filed in adult court, or who were transferred after a hearing in California from 2009–2018. Because Proposition 57 was not passed until 2016, this brief includes data on 14- and 15-year-olds who were directly filed in adult court.

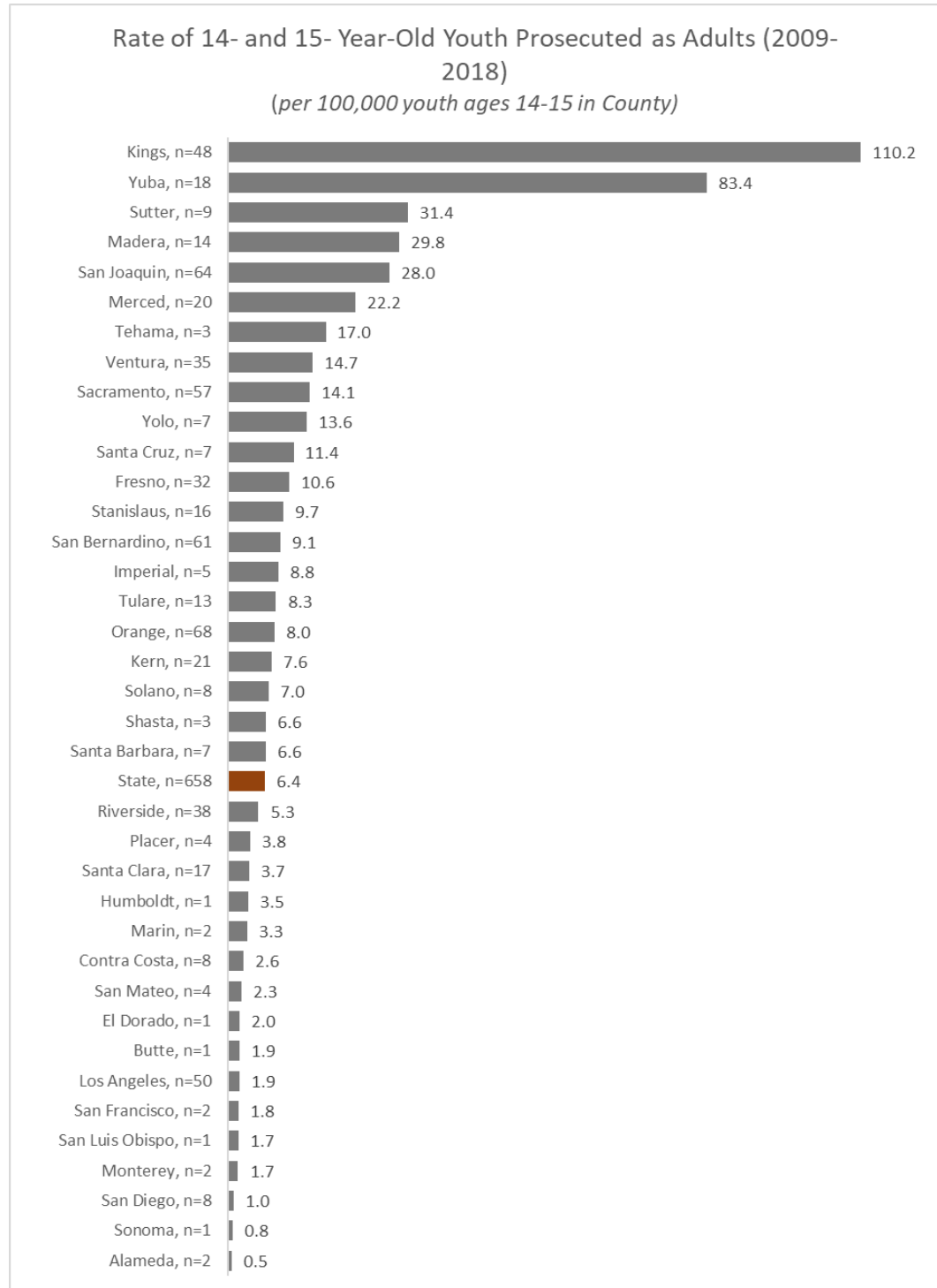
Transfer hearings do not mitigate the disparities. All youth subject to transfer hearings come into the courtroom with the same types of offenses. But youth of color experience very different outcomes. Data indicate that white youth are unlikely to be transferred to adult court. Juvenile court judges transfer only one in ten white youth, aged 14 to 15, to adult court following a hearing. Youth of color are much more likely to be transferred: Juvenile court judges transfer *four* in ten Latino youth and *five* in ten Black youth, aged 14 to 15, following a hearing.



Once transferred, youth lose access to essential services, including education and other programming. Instead, they face an increased risk of violence, gang recruitment, and other

trauma-compounding pressures. This decreases opportunities for rehabilitation among Black and Latino youth.

There are geographic inequities as well:



The rate at which 14- and 15- year-old youth in California are prosecuted as adults varies dramatically by county. As the above illustrates, youth in California face vastly different odds of being prosecuted in adult court based only on where they were accused of committing a crime.

Furthering the purposes of Proposition 57 means furthering those purposes for *all* Californians, not just some. The Legislature understood this point, and indeed explicitly viewed SB 1391 as a means to ameliorate disparities in young people’s access to rehabilitation, and their communities’ access to meaningful public safety. Materials advocating for SB 1391 decried the “vast disparities in who gets sent to adult court instead of juvenile court for the same crimes.”³⁰ Legislators expressed “concerns about racial disparities,” which “remain[ed] even under [the] judicial transfer system” implemented by Proposition 57. *Id.* And when then-Governor Brown signed SB 1391 into law, he highlighted “the stark racial and geographic disparity in how young men and women are treated who have

³⁰ Sen. Committee on Public Safety, *Juveniles: Fitness for Juvenile Court* (Feb. 16, 2018), Ex. H at 140.

committed similar crimes” as an important factor in his decision.³¹

SB 1391 is one meaningful step toward ameliorating those disparities by ensuring equal treatment for Black, Latino, and white youth under 16 years old, and ensuring the law is applied equally across the state. Taking into consideration the great disparities in the transfer rates of Black and Latino youth, and the geographic disparities, the Legislature reasonably concluded that SB 1391 was one tool to ensure that youth were afforded equal access to rehabilitative services—and that their communities were afforded equal access to the public safety benefits that result.

CONCLUSION

When the Legislature considered SB 1391, it had in front of it much of the foregoing empirical data, demonstrating that keeping 14- and 15-year-olds in the juvenile justice system would not only promote their own rehabilitation, but also enhance

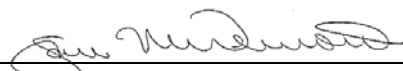
³¹ Letter from Edmund G. Brown, Jr., Governor, State of California on signing Senate Bill 1391 to the Members of the California State Senate (Sept. 30, 2018), *available at* <https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/SB-1391-signing-message.pdf>.

public safety, particularly in historically Black and Latino communities. Based on this information, the Legislature acted to further the purposes of Proposition 57 by eliminating prosecutors' power to seek transfer of 14- and 15-year-olds to adult court.

As this Court has explained in the past, "a written constitution . . . is not to be interpreted according to narrow or supertechnical principles, but liberally and on broad general lines, so that it may accomplish in full measure the objects of its establishment and so carry out the great principles of government." *People v. Giordano*, 42 Cal. 4th 644, 655 (2007). In passing SB 1391, the Legislature reasonably believed that bill would further Proposition 57's ameliorative purposes, broadly construed. The bill is therefore a valid amendment, and this Court should uphold it.

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP



Sara A. McDermott

William D. Temko (State Bar No. 98858)
Sara A. McDermott (State Bar No. 307564)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

*Attorneys for Human Rights Watch,
the Anti-Recidivism Coalition, and
the W. Haywood Burns Institute*

August 5, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in compliance with Rule 8.204 of the California Rules of Court. The brief was prepared with 13 point font or more. The brief, excluding the cover, the required tables, the signature block, and this certificate, is 6,975 words long, which is less than the total number of words permitted by the Rules of Court. In making this representation, Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: August 5, 2020



Sara A. McDermott

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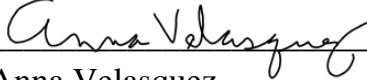
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Anna Velasquez

SERVICE LIST

O.G.

Petitioner
Via TrueFiling

Superior Court of Ventura County
Honorable Kevin J. McGee
4363 East Vineyard Avenue
Oxnard, CA 93036

Respondent
Via U.S. Mail

*Michelle Jeannette Contois
Deputy District Attorney
Tate Chilton McCallister
Ventura County District Attorney
Lisa Okinaka Lyytikainen
Office of the District Attorney

Real Party In Interest
Via TrueFiling

Nelson Ryan Richards
Office of the Attorney General
1300 I Street, Suite 125
Sacramento, CA 94244-2550

Real Party In Interest
Via TrueFiling

Office of the Clerk
California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102-3600

Via TrueFiling

STATE OF CALIFORNIA
Supreme Court of California

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(PEOPLE)

Case Number: **S259011**

Lower Court Case Number: **B295555**

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Tracie Campbell California Dept of Justice, Office of the Attorney General	tracie.campbell@doj.ca.gov	e-Serve	8/5/2020 6:00:28 PM
Rebecca Jones Attorney at Law 163313	jones163313@gmail.com	e-Serve	8/5/2020 6:00:28 PM
Alicia D'addario Equal Justice Initiative	adaddario@ej.org	e-Serve	8/5/2020 6:00:28 PM
John Pomeroy Office of the District Attorney 217477	jpomeroy@da.lacounty.gov	e-Serve	8/5/2020 6:00:28 PM
Michelle Contois Ventura County District Attorney 174208	michelle.contois@ventura.org	e-Serve	8/5/2020 6:00:28 PM
Cyn Yamashiro Independent Juvenile Defender Program 169964	cyamashiro@lacba.org	e-Serve	8/5/2020 6:00:28 PM
Jennifer Hansen California Appellate Project 249733	Jennifer@lacap.com	e-Serve	8/5/2020 6:00:28 PM
Kymerlee Stapleton Criminal Justice Legal Foundation 213463	kym.stapleton@cjl.org	e-Serve	8/5/2020 6:00:28 PM

Office Of The County Public Defender Todd Howeth, Public Defender 71909	writsandappeals@ventura.org	e-Serve	8/5/2020 6:00:28 PM
Jeff Rubin Office of the District Attorney - Santa Clara County 124916	JRubin@dao.sccgov.org	e-Serve	8/5/2020 6:00:28 PM
Kent Scheidegger Criminal Justice Legal Foundation 105178	kent.scheidegger@cjlif.org	e-Serve	8/5/2020 6:00:28 PM
Nelson Richards California Dept of Justice, Office of the Attorney General 246996	nelson.richards@doj.ca.gov	e-Serve	8/5/2020 6:00:28 PM
Michael McMahon Office of the Ventura County Public Defender	michael.mcmahon@ventura.ca	e-Serve	8/5/2020 6:00:28 PM
Mitchell Keiter Keiter Appellate Law 156755	Mitchell.Keiter@gmail.com	e-Serve	8/5/2020 6:00:28 PM
Sara Mcdermott Munger, Tolles & Olson LLP 307564	sara.mcdermott@mto.com	e-Serve	8/5/2020 6:00:28 PM
William Temko Munger Tolles & Olson LLP	william.temko@mto.com	e-Serve	8/5/2020 6:00:28 PM
L. Braucher First District Appellate Project 173754	rbraucher@fdap.org	e-Serve	8/5/2020 6:00:28 PM
Mark Zahner California District Attorneys Assn 137732	mzahner@cdaa.org	e-Serve	8/5/2020 6:00:28 PM
Attorney General - Los Angeles Office Office of the Attorney General 247037	dana.ali@doj.ca.gov	e-Serve	8/5/2020 6:00:28 PM
Susan Burrell Law Offices of Susan L. Burrell 74204	lsueburrell@gmail.com	e-Serve	8/5/2020 6:00:28 PM
Eileen Manning-Villar Pacific Juvenile Defender Center 201115	pjdcamicus@gmail.com	e-Serve	8/5/2020 6:00:28 PM

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8/5/2020

Date

/s/Sara McDermott

Signature

McDermott, Sara (307564)

Last Name, First Name (PNum)

Munger, Tolles & Olson LLP

Law Firm