[ms-0398.027.001.011]

COUNTY OF SAN DIEGO

CHIEF ADMINISTRATIVE OFFICE

AGENDA ITEM

BOARD OF SUPERVISORS
BRIAN P. BILBRAY
FIRST DISTRICT
GEORGE F. BAILEY
SECOND DISTRICT
SUSAN GOLDING
THIRD DISTRICT
LEON L. WILLIAMS
FOURTH DISTRICT
JOHN MACDONALD
FIFTH DISTRICT

1

SUBJECT: Proposition 115

SUPV. DIST: All

SUMMARY OF REQUEST:

This report contains an analysis which summarizes Proposition 115, the so-called "Crime Victims Initiative".

CHIEF ADMINISTRATIVE OFFICER'S RECOMMENDATION:

None. (District Attorney supports Proposition 115; Public Defender opposes Proposition 115.)

FISCAL IMPACT: None
The funding source is N/A . If approved, this request will result in $ 0 current year cost, $ 0 annual cost and will require addition of 0 staff years.

BOARD POLICY(IES) APPLICABLE: N/A

PREVIOUS RELEVANT BOARD ACTION: N/A

ORIGINATING DEPARTMENT: CAO

BOARD OF SUPERVISORS INFORMATION DEVELOPMENT FORM

SUBJECT: Proposition 115

BACKGROUND INFORMATION:

Proposition 115, as summarized in the attached analysis, is aimed primarily at expediting criminal procedures for the purpose of affording to victims of crimes swifter adjudication of the guilt or innocense of alledged perpetrators. Related issues which have arisen have to do with the calendaring of cases and the availability of defense counsel; and the impact of procedural changes on the availability of due process and related protections for those accused of crimes.

Even within this County's justice system, there is great disagreement over the meaning of key provisions of Proposition 115 -- particularly with respect to its impact on case calendaring and the availability of defense counsel. Depending on court interpretation of these provisions, the measure could result in substantial but undetermined cost savings; or, in the alternative, cost increases approaching $10 million annually. (Even the Office of the Legislative Analyst is unable to estimate with accuracy whether the measure will result in cost increases or decreases for counties). (continued)

CITIZENS COMMITTEE STATEMENT	( ) YES	(X) NO
COUNTY COUNSEL APPROVAL - AS TO LEGALITY	( ) YES	(X) N/A
( ) STANDARD FORM	( ) ORDINANCE	( ) RESOLUTION
AUDITOR APPROVAL NEEDED	( ) YES	(X) NO
4 VOTES REQUIRED	( ) YES	(X) NO
FINANCIAL MANAGEMENT APPROVAL NEEDED	( ) YES	(X) NO
CONTRACT REVIEW PANEL	( ) APPROVED	( ) NOT APPLICABLE

CONTRACT NUMBER: N/A

CONCURRENCES

CHARLES NARES — 531-5646 A-6

CONTACT PERSON — LC/PHONE AND MAIL STOP

DEPARTMENT AUTHORIZED REPRESENTATIVE

CHIEF ADMINISTRATIVE OFFICER

May 8, 1990

MEETING DATE

COUNTY OF SAN DIEGO

BALLOT PROPOSITION ANALYSIS

JUNE 1990

Ballot Initiative:
Crime Victims Justice Reform Act of 1989 (Proposition 115)

The Initiative proposes significant changes to the criminal justice system. It would amend the Constitution of California, the Code of Civil Procedure, the Evidence Code, and the Penal Code.

Present Law:
The five major current criminal procedures subject to substantive change are:

1. Preliminary Hearings
   a) The law requires the court to conduct a preliminary hearing in all felony cases to determine if there is sufficient evidence to bind a defendant over for trial.
   b) The prosecution must provide direct testimony from victims and witnesses.

2. Court Appointed Defense Attorney
   The Court will appoint the Public Defender as counsel unless a conflict of interest is declared. Conflicts may be based on either the unavailability of counsel or current/past involvement with a defendant or witness. As a practical matter, conflicts issues are generally limited to past or current representation of defendant(s) and/or witnesses.

3. Jury Selection
   The attorneys question and select jury panel members.

4. Speedy Trial
   The constitution guarantees a defendant the right to a trial within 60 days of being arraigned on criminal charges. Only the defendant has the right to waive the timeframe.

5. Discovery
   The law provides defense counsel discovery of the prosecution's evidence.

Proposed Law:
The aforementioned procedures would be modified in the following manner:

1. Preliminary Hearings:
   a) A defendant is not entitled to a preliminary hearing when the indictment is issued by the Grand Jury.
   b) The court may rely on hearsay evidence from police officers thereby eliminating the need for direct testimony from victims and witnesses.

2. Court Appointed Defense Attorney:
   The Court will require the defense counsel (generally the Public Defender) to represent that he/she will be ready to proceed within the dates set for preliminary hearing or trial. The court will not consider counsel's convenience, calendar conflicts or other business as good cause for a continuance. If counsel is not ready on the date set for preliminary hearing or trial, the court may impose monetary sanctions and may reassign the case to another counsel.

3. Jury Selection
   The judge will question potential jurors; and under certain conditions, the attorneys may expand the examination.

4. Speedy Trial
   The people are entitled to have a trial commence within 60 days of a defendant's arraignment.

5. Discovery
   Imposes limitations on defense counsel's access to evidentiary information and provides the prosecution the right to obtain evidentiary information from the defense.

If passed, the Initiative will also amend the Penal Code for the following categories of crime:

5. First Degree Felony Murder
   Expands the category to include murders involving kidnapping, sodomy, oral copulation, foreign object rape and train wrecking.

6. Special Circumstance Findings: Death Penalty or Life Imprisonment Without Possibility of Parole Circumstances
   Three major changes are: (1) Crimes such as killing a witness in juvenile proceedings, mayhem, foreign object rape, and certain categories of arson, kidnapping, and robbery would be subject to these penalties; (2) No proof of intent to kill in the course of a crime is required to make a defendant subject to these penalties; and (3) Eliminates judicial discretion to reduce a life sentence without parole to life sentence with parole.

7. Life Sentence Without Parole for Murder by 16 or 17 Year Old
A defendant in this age group found guilty of a first degree special circumstance murder would be subject to a life sentence without parole or a term of 25 years to life.

Constitutional Amendments:
The State Constitution would be amended to provide criminal adult and juvenile defendants' rights that are the same as, and not greater than, those under the Constitution of the United States. The proposed modifications of the aforementioned criminal procedures may affect the following rights:

1. Equal Protection of Law
2. Due Process of Law
3. Assistance of Counsel
4. Personal Presence at Trial
5. Speedy and Public Trial
6. Compulsory Attendance of Witnesses
7. Confrontation of Witnesses
8. Freedom From Unreasonable Searches and Seizures
9. Privacy
10. Privilege Against Self-Incrimination
11. Privilege Against Double-Jeopardy
12. Prohibition of Cruel and Unusual Punishment

Discussion:
Proposition 115, The Crime Victims Justice Reform Act of 1989, is an initiative constitutional amendment sponsored by state Senator Ed Royce of Anaheim, Colleen Thomas Campbell of San Juan Capistrano and Kern County District Attorney Edward Jaegels. It would modify criminal procedures related to preliminary hearings, jury selection and rights to a speedy trial; amend the state's constitution changing an adult or juvenile defendant's rights to be the same as, and not greater than, those guaranteed by the U.S. Constitution; and make statutory changes affecting various serious criminal acts i.e., torture, murder.

Proposition 115 has two focuses: first, to strengthen and add laws that impose severe sanctions for certain crimes; and second, to balance the rights of victims of crime with the rights of the accused. The underlying theme is that the rights of crime victims have not been addressed by either the courts or the Legislature.

Because it is an initiative, and therefore must be accepted or rejected in its entirety, and because the cost implications to local government are not subject to state reimbursement, the potential benefits must be carefully weighed against the overall implementation and operating costs.

The following information highlights the key issues and the arguments in support and opposition:

PRELIMINARY HEARINGS

Under current case law, all defendants are entitled to a preliminary hearing. Preliminary Hearings are used to determine if there is sufficient evidence to bind a defendant over for trial. The hearings involve the Municipal Court, District Attorney, and the Public Defender or other defense counsel. Under the Initiative, defendants that are indicted by the Grand Jury will not receive a preliminary hearing.

Proponents argue that:

- to require a preliminary hearing after a Grand Jury has issued an indictment is a waste of judicial resources;
- duplicative proceedings can have substantial costs. For example, a case in Los Angeles took seven days for the Grand Jury to issue an indictment and the preliminary hearing took one year at an estimated cost of $2 million.
- allowing hearsay i.e., a police officer testifies in-lieu of the witness or victim will spare the victim or witnesses from unnecessary trauma; and
- allowing hearsay will generate substantial cost/time savings.

Opponents argue that:

- the use of the Grand Jury process denies the defendant the right to an impartial hearing because only the prosecution presents cases before the Grand Jury;
- as a practical matter, without the benefit of a preliminary hearing, more cases may go to trial because both sides will not be able to evaluate the strength of their case.

JURY SELECTION

Judges, rather than attorneys, will question jurors on their qualifications to serve. However, under certain circumstances, the attorneys would be allowed to supplement the examination.

Proponents argue that:

- the time required to select a jury should decrease.
- in non-capital cases, trial times savings could be 20% of the trial time; and
- in capital cases, trial time savings will range between 30%to 50%.

Opponents argue that:

- the judge would not probe as deeply as either counsel to determine whether a particular juror is biased;
- there is a pilot project currently under way to determine the effectiveness of the judge-initiated selection process; and therefore, statewide implementation is premature.

COURT APPOINTED DEFENSE ATTORNEY

Under the proposed law, the court cannot appoint counsel (Public Defender) who do not indicate that they can proceed to preliminary hearing or trial within the statutory 60 day limit.

Proponents argue that:

- o requiring a trial to commence by the specified date will save time and money;
- o it will prevent crime victims from victimization that occurs when their case is delayed; and
- o the ready-for-trial language will be interpreted in a practical, common sense and reasonable way.

Opponents argue that:

- o the initiative eliminates schedule conflicts resulting from multiple cases as good cause to continue a matter; therefore, it will require the Public Defender to substantially reduce his caseload;
- o the reduced caseload will require an increase to the Public Defender's staff or an increased use of private defense attorneys;
- o the current law, allows the Public defender to manage an optimum number of cases. For example: a Deputy Public Defender can have more than one case scheduled for preliminary hearing or trial on the same day. This is possible because an estimated 90% of all cases are disposed of without going to trial, i.e., a defendant pleads guilty or accepts a plea bargain agreement. When a case has not settled, and a schedule conflict exists, the Public Defender will request and obtain a continuance.

DISCOVERY

The Initiative substantially changes current discovery procedures. Currently, the prosecution has no right to access any defense information. The Initiative establishes reciprocal discovery for both the prosecution and defense. It will make it consistent with 41 other states and the federal court system.

Proponents argue that:

- o the limitations will reduce the number of trials and lead to reasonable plea bargains;
- o the Initiative clearly delineates what information must be made available and that it must be done at least 30 days prior to trial; and
- o it will save valuable court time presently devoted to judicial rulings on requests for discovery.

Opponents argue that:

- o there will be more trials because, without all relevant information, a defendant would be less apt to accept a plea bargain agreement; and
- o current California case law recognizes a defendant's right to obtain from the prosecution any information which may reasonably aid in developing a defense, the Initiative would limit this broad right.

FIRST DEGREE FELONY MURDER

The law would be expanded to include first-degree murder for any murder committed in the course kidnapping, sodomy, oral copulation, foreign object rape and train wrecking.

Proponents argue that;

- o expansion of the first degree murder charge would clarify and provide consistency between certain penal code provisions.

Opponents argue that:

- o some of the proposed crimes are not inherently dangerous felonies and therefore should not be subject to first degree murder.

SPECIAL CIRCUMSTANCE FINDINGS: DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE CIRCUMSTANCES

The Initiative would add crimes that would be subject to these penalties; eliminate the need to prove intent to kill in the course of a crime in order to make a defendant subject to these penalties; and eliminate judicial discretion to reduce a life sentence without parole to life sentence.

Proponents argue that:

- o imposing the most severe sanctions is warranted given the severity of the crimes.

Opponents argue that:

- o the proposed amendments may violate existing case law and in some instances be found unconstitutional.

LIFE SENTENCE WITHOUT PAROLE FOR MURDER BY 16 OR 17 YEAR OLD

A juvenile of this age group convicted in adult court of a first degree special circumstance murder would be subject to these sanctions.

Proponents argue that:
- o the punishment fits the crime and it protects society by sending a clear message to deter other juveniles.

Opponents argue that:
- o existing laws offer adequate punishment.

Fiscal Impact:
While the Initiative does offer the potential for cost/avoidance benefits to the criminal justice system, it is not possible to estimate with any degree of accuracy the magnitude of the benefit. The Public Defender estimates the need for 100 additional attorneys at a cost of $10.2 million to handle the reduced felony caseload per attorney.