

Proposition 9 Report

Santa Clara County Prop 9 Task Force

Effective November 5, 2008, Proposition 9 amends Article 1, Section 28 of the California Constitution; adds section 679.026 to the California Penal Code; and amends Penal Code sections relating to parole revocation proceedings. The Proposition declared that victims are entitled to justice and due process. The Proposition found changes were necessary to remedy a justice system that fails to fully recognize and enforce the rights of victims; and that the criminal justice system is inefficient, overcrowded and arcane.

In order to better serve and assure those persons who are victimized in Santa Clara County, the County criminal justice agencies have together studied the mandates of Proposition 9 (except for the new provisions regarding Parole, knowing that the state is addressing the new mandates as it pertains to state agencies). The following agencies participated in this study and report:

Campbell Police Department
Federal Bureau of Investigation
Gilroy Police Department
Los Altos Police Department
Los Gatos–Monte Sereno Police Department
Milpitas Police Department
Morgan Hill Police Department
Mountain View Police Department
San Jose Police Department

Santa Clara County Department of Correction
Santa Clara County District Attorney’s Office
Santa Clara County Information Services Department
Santa Clara County Office of Pretrial Services
Santa Clara County Probation Department
Santa Clara County Sheriff’s Office
Santa Clara Police Department
Sunnyvale Department of Public Safety
Victim-Witness Assistance Center

This report reviews Proposition 9 amendments to the California Constitution with comment from the Task Force on how we are addressing the new mandates. In a collaborative and uniform effort we are dedicated to respecting the following Proposition 9 rights of victims:

§28(b) (1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

In 1982 *Victims’ Bill of Rights* (Proposition 8) passed in California. This Proposition caused the California Legislature to write and pass California Penal Code sections 679 et seq. Santa Clara County criminal justice agencies have been mindful and respectful of victims’ rights since passage of Proposition 8.

The mission statement for the Office of the District Attorney states in pertinent part “We honor and protect the rights of victims.” In 1992, a Santa Clara County assistant district attorney compiled *Victims’ Rights*, a handbook distributed to all California prosecutors, published by Institute for the

Advancement of Criminal Justice in cooperation with California District Attorney's Association and California State Board of Control. In 2008, a Santa Clara County assistant district attorney worked on the updated version of this manual which was published by Victim Compensation and Government Claims Board, and California District Attorneys Association. The 2008 Victims' Rights Manual has been distributed to each Santa Clara County prosecutor.

Law Enforcement agencies both in-house and through Peace Officers Standards and Testing (POST) provide training and testing on victims' rights.

The Santa Clara County law enforcement agencies and District Attorney's Office work closely with the Victim Witness Assistance Center (www.victim.org) to honor and protect victims.

§28(b) (2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

This is the current practice of criminal justice agencies in Santa Clara County. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- Courts issue no contact orders as a condition of bail or own recognizance (OR) release.
- PC 136.2(a)(4) Court may issue an order prohibiting contact with victim or witness. Violation of the order is a crime.
- PC 136.2(a)(6) Court may order a law enforcement agency to provide protection for a victim and their immediate family.
- PC 136.2(a)(7) Court may issue an order protecting victims of violent crime from contact with a defendant and that order is transmitted to law enforcement agencies.
- PC 1054.8 Attorneys and Investigators must identify themselves when asking for interviews from victims and witnesses.
- W&I 213.5 Court may issue a protective order enjoining a minor from contacting or threatening any person.
- W&I 213.7 An enjoined party is prohibited from obtaining address or location of protected party.
- Santa Clara County law enforcement agencies do not hesitate to use the proper legal tools to ensure the safety of a victim such as seeking

emergency protective orders (EPROs) or arresting on a new charge, or arresting for violation of probation or parole.

- Some Santa Clara County law enforcement agencies have threat assessment resources to evaluate danger to a victim and define an appropriate remedy or protection plan. The District Attorney's Office (1) conducts threat assessments for persons involved in major cases and (2) participates in the State's victim relocation program that is reserved for the very highest threats.

§28(b) (3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

This is the current practice of criminal justice agencies in Santa Clara County. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- PC 1270.1 requires the Court to hold a hearing before release on bail above or below schedule amount for serious or violent felony. Section (c) directs the Court to consider the potential danger to other persons if release is granted.
- PC 1275 requires the Court to consider "the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged...."
- In Santa Clara County a magistrate reviews *Affidavit re Probable Cause and Bail Setting* (form 438 Rev 12/07) before setting bail. This form includes a portion for the arresting law enforcement agent to fill out – "9) Threats to victim(s) or witness(es): including information leading you to believe that the defendant may injure the victim(s) witness(es) (threats, prior violence, etc.) or may flee prior to a court appearance...."
- In Santa Clara County a magistrate reviews *County of Santa Clara Office of Pre-Trial Services Court Report* before setting bail. This form includes a portion which requires the pre-trial officer to inform the court of the arrestee's prior record and pending charges as well as a portion in which the officer can add information about the victim and the victim's family.
- If a defendant is released on bail or OR (own recognizance), Santa Clara County Courts do not hesitate to remand a defendant who poses a renewed threat to a victim or victim's family.

§28(b) (4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

This is the current practice of criminal justice agencies in Santa Clara County. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- Prosecutors and the Courts must balance the right of victims' privacy against the statutory and federal constitutional obligations to provide discovery.
- PC 964 Confidential personal information regarding witnesses or victims contained in investigative reports shall be protected.
- PC 1054.2 Defense attorney may not disclose address/phone number of victim or witness to defendant/defendant's family.
- PC 1054.7 Disclosure of identifying information may be denied, restricted or deferred.
- PC 841.5 Law enforcement agencies may not disclose victim address/phone to defendant or arrestee.
- GC 6254(f) Victim's name may be withheld from crime reports (sex assault, DV and child abuse victims).
- W&I 6603.3 Disclosure of victim's address to sexually violent predator (SVP) prohibited but not to the SVP's attorney.
- CCP 1985.3 If a defense attorney serves a subpoena for victim's private records (such as medical, school or financial), the victim must be given notice and an opportunity to quash the subpoena.
- Santa Clara County law enforcement agencies along with the District Attorney's Office ask for a sealing order pursuant to *People v. Hobbs* (1994) 7 Cal. 4th 948 whenever a document would risk the safety of a nonmaterial witness or his/her immediate family. This procedure allows the identifying information of the informant to be kept confidential.
- The Victim Witness Assistance Center program may not release

information regarding s victim’s address, telephone, e-mail address or any other identifying victim information to the defense attorney without a Court subpoena.

§28(b) (5) To refuse an interview, deposition, or discovery request by the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

- PC 1054.5 The exclusive means of discovery is through the prosecutor.
- Depositions are not available in criminal cases. (*Clark v. Superior Court* (1961) 190 Cal. App. 2d 739.)
- Victims and witness have the right to refuse to be interviewed. (*Walker v. Superior Court* (1957) 155 Cal. App. 2d 134, 140.
- Victims and witness have a duty to respond to Court subpoenas. The Proposition 9 Task Force believes that prosecutors and law enforcement agents should advise victims who are approached for interviews *outside of court as follows:*

“As the victim of a criminal case you are an important witness, however you have the right to agree or not agree to an interview outside of court by the defendant or his/her representative, as you see fit.”

§28(b) (6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

This is the current practice of criminal justice agencies in Santa Clara County for all victims who make a request or inquiry. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- PC 679.02(a)(12)(A) and PC 1191.1 Victims can request notice of felony pretrial disposition.
- PC 679.02(a)(12) Victim or next-of-kin have right to notice of violent felony pretrial disposition without making a request.
- The Santa Clara County District Attorney’s Office has an ombudsman who can be reached at 408.792.2504 for direction to the appropriate prosecutor.

§28(b) (7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

This is the current practice of criminal justice agencies in Santa Clara County for all victims who make a request or inquiry. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- PC 679.02(a)(3) Victims have a right to be at sentencing hearing.
- PC 679.02(a)(4) Victims have a right to be at felony sentencing of juvenile.
- PC 1102.6(a) Victims are entitled to be present at all hearings at which the general public is entitled to be present.
- W&I 656.2 and W&I 707 cases, a prosecutor shall inform the victim, upon request of the dates of fitness and dispositional hearings.
- The Santa Clara County Probation Department notifies victims, by telephone and letter, of felony sentencing dates.
- The Santa Clara County Department of Correction operates a victim notification system (Victim Information and Notification Everyday known as VINE), that allows victims to receive telephone alerts regarding the release or escape of a designated inmate. VINE is available in English, Vietnamese, and Spanish and all registrations are confidential. Anyone can call (800.464.3568) and/or register (www.vinelink.com) with VINE.

The District Attorney's Office, Information Services Department and Department of Correction are exploring the feasibility of expanding VINE so that it can be used as a system for notification of court dates.

- The Santa Clara County District Attorney's Office has an ombudsman who can be reached at 408.792.2504 for direction to the appropriate prosecutor.

§28(b) (8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

This is the current practice of criminal justice agencies in Santa Clara County for all victims who make a request to be heard at sentencing and

considered at bail hearings. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- See notes under 28(b)(3) above regarding victims' rights at bail hearings.
- PC 679.02(a)(3) and PC1191.1 Victims have a right to be heard at sentencing.
- PC 1191.15 Victim or next of kin may file written or taped statement in lieu of appearance.
- W&I 656.2 Victims have the right to present impact statements in juvenile court.
- The Court often permits a victim-impact statement from the victim's family in a death penalty case during the penalty phase.
- The Court uses discretion to allow victims to speak when relevant to the proceedings at hand.
- The Santa Clara County District Attorney's Office has an ombudsman who can be reached at 408.792.2504 for direction to the appropriate prosecutor.

§28(b) (9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

The Defendant has a right to representation and time to prepare adequately for defense against criminal allegations. California law nonetheless recognizes the importance of a speedy disposition for the People according to the following statutes:

- PC 679.02(a)(10) and Penal 1050(a) recognize the People's and a victim's right to an expeditious disposition of a criminal case
- PC 1048 provides the rank and priority of criminal cases over civil cases, and cases involving designated vulnerable or aged victims over others.

§28(b) (10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

This is the current practice of the Santa Clara County Probation Department. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- PC 1203(h) In the case of a felony, the probation officer may obtain the statement of the victim.
- Rule of Court 4.411.5(a) (5) Probation officer's pre-sentence report must include the victim statement.

§28(b) (11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

This section expands PC 1203d which requires that a probation report be available to the court, defendant and prosecutor at least two days before sentencing. Santa Clara County Probation Department in conjunction with the District Attorney's Office will make requested reports available to victims.

§28(b) (12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

This is the current practice of the Santa Clara County Criminal Justice Agencies. Upon request victims will be told of conviction, sentence, place and time of incarceration or other disposition of the defendant. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- PC 679.02(a)(2) and PC 11116.10 mandate notice of the final disposition of the case.
- PC 679.02(a)(3) requires notice of sentencing.
- PC 679.02(a)(4) requires notice of juvenile sentencing.
- PC 679.02(a)(6) and PC 11155 requires notice of escape, upon request.
- PC 679.02(a)(13) & (14) requires notice of jail release, upon request.
- PC 3058.6 et seq. requires special notices of prison release.
- PC 646.92 requires special notices of release, upon request.
- PC 3058.8 requires notification of prison release, upon request.
- The Santa Clara County Department of Correction provides a victim notification system (Victim Information and Notification Everyday known as VINE) that allows victims to receive telephone alerts regarding the release or escape of a designated inmate. VINE is available in English,

Vietnamese, and Spanish and all registrations are confidential. Anyone can call (800.464.3568) and/or register (www.vinelink.com) with VINE.

The system provides e-mail as well as automated and manual telephone (for all victims who have registered with the system) notification of an inmate's release, transfer or escape.

The District Attorney's Office, Information Services Department and Department of Correction are exploring the feasibility of expanding VINE so that it can be used as a system for notification of court dates.

§28(b) (13) To restitution.

(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

(B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

This is the current practice of the Santa Clara County criminal justice agencies. The District Attorney's Office advocates for victims in restitution matters. (1) Santa Clara is one of two counties in California to schedule a special court calendar for modification of restitution orders where the Court, after sentencing, determines the amount of restitution owed and issues a restitution order for that amount. The District Attorney's Office at the time of this writing facilitates four to five hundred such orders each month. (2) The District Attorney's Office also appears at a specially-set violation of probation calendar for defendants who have not made victims whole as previously ordered by the Court.

The District Attorney's Office contracts with Victim Witness Assistance Center which supplies felony restitution services to victims.

The County Criminal Justice Information Control (CJIC) is an active data base that tracks the court appearances and criminal histories of defendants in the County. CJIC also tracks the restitution ordered from defendants. Santa Clara County Department of Revenue tracks payments as the defendants make them. The following statutes ensured these rights prior to the passage of Proposition 9:

- PC 1191.2 requires a probation officer to provide a victim with information concerning the victim's right to civil recovery against the defendant, the requirement that a court order restitution for the victim and

the victim's right to receive a copy of a restitution order in order to enforce a civil judgment.

- PC 1191.21 requires victims be notified that they may be eligible for compensation from the State Restitution Fund.
- PC 1202.4 and W&I 730.6 Restitution should be ordered in every case in which there is an economic loss to the victim.
- PC 1203.1d (b)(1) Restitution to the victim takes priority over fines and fees.
- Victim-Witness Assistance Center advocates collect misdemeanor restitution orders from a designated clerk of the Court and then conduct written and telephone outreach to the victims.

§28(b) (14) To the prompt return of property when no longer needed as evidence.

This is the current practice of the Santa Clara County law enforcement agencies. Santa Clara County evidence technicians have an organization (Santa Clara County Regional Association for Property and Evidence known as SCRAPE) which has set forth policies regarding the retention and return of property. The following statutes and practices ensured these rights prior to the passage of Proposition 9:

- PC 679.02(a)(9) requires the expeditious return of stolen or embezzled property when no longer needed as evidence.
- PC 13835.5(a)(6) requires that local assistance centers for victims and witnesses provide assistance in obtaining the return of a victim's property held as evidence by law enforcement agencies, if requested.
- SCRAPE has a policy for release of property in nonviolent cases after a photography procedure is followed.

§28(b) (17) To be informed of the rights enumerated in paragraphs (1) through (16).

The Santa Clara County criminal justice agencies, in cooperation from the California Attorney General's Office, will be improving our method of informing victims of their rights.

The District Attorney's Office Website displays *Marsy's Rights* (www.santaclara-da.org). It is the intent of each Santa Clara County law enforcement agency and Victim-Witness Assistance Center to follow suit.

Pursuant to PC 679.026 the California Attorney General's Office is developing a *Marsy's Rights Card and Resources* ideally available in several languages. Investigating agencies, the Victim-Witness Assistance Center and Santa Clara County District Attorney will provide or make the card available to the victim.

Additionally, Crime Victims United along with California District Attorneys Association, and the California Department of Corrections and Rehabilitation is drafting a victim resource guide. Santa Clara County Law Enforcement Agencies will be providing additional information regarding victim's survival and resources either on the card or in a separate brochure or video. The District Attorney's Office will likewise have the same appropriate materials available to victims.

A State-funded website containing victims' rights is also mandated by Penal Code section 679.026.

Santa Clara County law enforcement agencies have pledged to develop a policy of victim notification that comports with the mandates of Proposition 9.

§28(c)(1) Enforcement of Rights. The victim, victim's attorney or representative or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the cases as a matter of right. The court shall act promptly on such a request.

The Santa Clara County District Attorney's Office represents the People of California in court and is dedicated to protecting victims' rights.

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