

# Measure U418

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## **INSTRUCTIONS:**

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This measure is quite long as may take as long as 15 minutes to read.

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## **BALLOT MEASURE U418**

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### **BACKGROUND**

The California criminal justice system is governed by the State Constitution, by statutes enacted by the Legislature and the people, and by court rulings.

Under the criminal justice system, persons convicted of misdemeanors may be fined or sentenced to a county jail term, or both. Those convicted of felonies may be fined in some cases, sentenced to state prison, or (if they were under 21 years of age at the time they were apprehended) committed to the Youth Authority, or both fined and imprisoned. For some crimes, a person may receive "probation" in lieu of a prison sentence or a fine.

### **PROPOSAL**

This initiative proposes many changes in the State Constitution and statutory law that would alter criminal justice procedures and punishments and constitutional rights. The major changes are summarized below. Restitution. Under existing law, victims of crime are not automatically entitled to receive "restitution" from the person convicted of the crime. (Restitution would involve, for example, replacement of stolen or damaged property, or reimbursement for costs that the victim incurred as a result of the crime.) In some cases, however, the courts release a convicted person on probation, on the condition that restitution be provided to the victim or victims.

This measure would grant crime victims who suffer losses a constitutional right to receive restitution. Except in unusual cases, convicted persons would be required to make restitution to all of their victims who suffer losses. The extent to which restitution would be made would depend on how many convicted persons have or acquire sufficient assets to make restitution. The Legislature would be responsible for adopting laws to implement this section of the measure.

**Safe Schools.** The Constitution currently provides that all people have the inalienable right of "pursuing and obtaining safety, happiness, and privacy." In addition, statutory law prohibits various acts upon school grounds which disturb the peace of students or staff, or which disrupt the peaceful conduct of school activities. This measure would add a section to the State Constitution declaring that students and staff of public elementary and secondary schools have the "inalienable right to attend campuses which are safe, secure, and peaceful."

**Evidence.** Under current law, certain evidence is not permitted to be presented in a criminal trial or hearing. For example, evidence obtained through unlawful eavesdropping or wiretapping, or through unlawful searches of persons or property, cannot be used in court. This measure generally would allow most relevant evidence to be presented in criminal cases, subject to such exceptions as the Legislature may in the future enact by a two-thirds vote. The measure could not affect federal restrictions on the use of evidence.

**Bail.** Under the State Constitution and statutory law, the courts generally must release on bail all persons accused of committing a crime, while they await trial. The courts may deny bail only for those who are accused of felonies punishable by death if the court determines that the proof of guilt is evident or the presumption of guilt is great.

In fixing the amount of bail, courts are required by statute to consider the seriousness of the offense with which the person is charged, the defendant's previous criminal record and the probability that the defendant will appear at the trial or hearings of the case. The State Constitution prohibits courts from setting "excessive" bail.

The courts also may allow those accused of committing a crime to be released without bail upon their written promise to appear in court when required. The failure to appear in court as promised can result in additional criminal charges being filed against the accused.

Court decisions have held that the purpose of bail is to assure that the defendant will appear in court to stand trial, rather than to protect the public's safety.

This measure would amend the State Constitution to give the courts discretion in deciding whether to grant bail. It would, however, continue the prohibition on bail in felony cases punishable by death when the proof of guilt is evident or the presumption of guilt is great.

In addition, the measure would add to the State Constitution a provision requiring the courts in fixing, reducing, or denying bail or permitting release without bail to consider the same factors that they now are required by statute to consider in fixing the amount of bail. It would also make protection of the public's safety the primary consideration in bail determinations. Moreover, the measure would prohibit the courts from releasing without bail persons charged with certain felonies.

Finally, the measure would require the court to state for the record its reasons for deciding to (a) grant or deny bail or (b) release an accused person without bail.

**Prior Convictions.** The measure would amend the State Constitution to require that information about prior felony convictions be used without limitation to discredit the testimony of a witness, including that of a defendant. Under current law, such information may be used only under limited circumstances.

**Longer Prison Terms.** Under existing law, a prison sentence can be increased from what it otherwise would be by from one to ten years, depending on the crime, if the convicted person has served prior prison terms, and a life sentence can be given to certain repeat offenders. Convictions resulting in probation or commitment to the Youth Authority generally are not considered for the purpose of increasing sentences, and there are certain limitations on the overall length of sentences.

This measure includes two provisions that would increase prison sentences for persons convicted of specified felonies. First, upon a second or subsequent conviction for one of these felonies, the defendant could receive, on top of his or her sentence, an additional five-year prison term for each such prior conviction, regardless of the sentence imposed for the prior conviction. This provision would not apply in cases where other provisions of law would result in even longer prison terms. Second, any prior felony conviction could be used without limitation in calculating longer prison terms.

**Defenses of Diminished Capacity and Insanity.** The measure would prohibit the use of evidence concerning a defendant's intoxication, trauma, mental illness, disease, or defect for the purpose of proving or contesting whether a defendant had a certain state of mind in connection with the commission of a crime. Legislation enacted in 1981 significantly limited use of this type of evidence.

This measure would provide that in order to be found not guilty by reason of insanity a defendant must prove that he or she (1) was incapable of knowing or understanding the nature and quality of his or her actions and (2) was incapable of distinguishing right from wrong at the time of the crime. These provisions could increase the difficulty of proving that a person is not guilty by reason of insanity.

If this measure is approved, evidence of diminished mental capacity or a mental disorder could be considered at the time of sentencing.

**Victim Statements.** Under existing law, statements of victims or next of kin are requested for various reports which are submitted to the court. In many cases, parole boards are not required to notify victims or next of kin about hearings.

This measure would require that the victims of any crimes, or the next of kin of the victims if the victims have died, be notified of (1) the sentencing hearing and (2) any parole hearing (if they so request) involving persons sentenced to state prison or the Youth Authority. During the hearings, the victim, next of kin, or his or her attorney would have the right to make statements to the court or hearing board. In addition, this measure would require the court or hearing board to state whether the convicted person would pose a threat to public safety if he or she were released on probation or parole.

**Plea Bargaining.** The measure would place restrictions on plea bargaining in cases involving specified felonies and offenses of driving while under the influence of an intoxicating substance.

"Plea bargaining" is a term used to describe situations in which the defendant agrees to plead guilty in exchange for a reduced charge or sentence.

***Exclusion of Certain Persons from Sentencing to the Youth Authority.*** Under current law, persons who commit certain sex crimes at the age of 18 years or older and some other youthful offenders are net sent to the Youth Authority. This measure would prohibit sending to the Youth Authority persons who were 18 years of age or older at the time they committed murder, rape, or other specified felonies. As a result, they would be sentenced to state prison or local jails, or receive probation.

***Mentally Disordered Sex Offenders.*** This measure contains a provision which would have changed the law concerning the treatment of certain sex offenders. However, legislation enacted in 1981 achieved the same purpose. Consequently, this provision has no effect.



**STOP!**

Please go to the online survey, enter the 4-character code for this ballot measure (printed at the top and bottom of this page) and answer the survey questions.