

Editorial: Prop 57 is a much-needed check on prosecutorial power. Vote yes

By The Times Editorial Board

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Proposition 57 is Gov. Jerry Brown’s effort to recalibrate California’s criminal justice system by returning to judges, parole boards and prison officials some of the power that craven lawmakers and frightened voters have, over the years, unwisely transferred to prosecutors. It’s a welcome and needed measure, although less simple than the brevity of its language or various assertions on both sides would suggest. The Times urges voters to read it, understand it, and vote “yes.”

The measure comes in two parts, and one of them is easy. It makes accused lawbreakers under 18 subject to the state’s juvenile court system. Any prosecutor who wants a case transferred to adult court would have to make an argument to a judge, who would have the final say on where the accused would be tried.

That's the sensible way the law worked in California for decades until 2000, when voters passed Proposition 21 and upset the essential balance of the justice system by allowing prosecutors, rather than judges, to choose between juvenile and adult court.

Why did voters do it? Although youth crime was dropping, politicians got a lot of mileage out of the argument that huge numbers of children and teenagers had morphed into uncontrollable predators who could be dealt with only by trying them and punishing them as if they were fully formed adults. It was a message built on fear and dipped in racism — because a disproportionate number of the people affected by it were nonwhite — and the subtext was that judges were too softhearted or softheaded to see how just vicious young offenders had become.

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Gov. Pete Wilson wrote the measure and won enthusiastic support from prosecutors. Today, however, many district attorneys acknowledge that the 2000 juvenile justice measure was overkill and ought to be rolled back. Some say they'd have no problem with Proposition 57 if it didn't also change some aspects of adult punishment.

That's the second, more complex part: Proposition 57 would make some prison inmates eligible to seek parole once they have served the base portion of their terms — but before they have served time for any of the add-ons that lawmakers, and sometimes voters, have used to “enhance” sentences for, say, having previous convictions or belonging to a gang.

Under Proposition 57, some inmates could apply for parole hearings and get parole after they have completed their base terms and have begun serving the enhancement portion of their sentences.

Opponents call this “early release,” and they are technically correct — an inmate facing sentence enhancements who successfully goes through the parole process will be out earlier than one who does not.

But a little context is in order. Even today, most inmates get some form of early release automatically because the Legislature has adopted laws that allow or even require release on parole after only a portion of the sentence is served.

California law calls that kind of automatic release “parole,” but it's really something quite different. Real parole is release from prison after a parole board finds that the inmate has behaved properly and has presented persuasive evidence of reform and rehabilitation. The process includes arguments from the prosecutor, opportunities for

the board to hear from crime victims and their families, and an assessment of the risk that the inmate would pose to society if released. It requires final sign-off from the governor. For most inmates, that kind of real parole virtually disappeared from California in 1977, after Brown signed a law banning open-ended sentencing — something he now says he regrets..

In the last few years, real parole has made a modest comeback as the state seeks to comply with federal court orders to reduce its prison population. Parole boards have weighed and granted release of elderly inmates and “second-strike” prisoners. So far the results are good. Proposition 57 would expand this real parole process to many more inmates.

In addition to parole boards, prison officials would be able to grant inmates rehabilitation credits. This portion of the measure is controversial because it appears to apply to base terms as well as enhancements, but the thinking is sound. Inmates will have new incentives to change their behavior, both in prison and after release. For many inmates, prisons will cease to be merely warehouses and may at last become instruments of rehabilitation.

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