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AP Associated Press

Calif. initiative would mandate victims' rights

By DON THOMPSON, Associated Press Writer

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After Patricia Wenskunas was assaulted by her personal trainer in 2002, she felt victimized a second time when prosecutors negotiated a plea agreement with her attacker without her knowledge.

Angered to action, she formed Crime Survivors Inc. after rallying 50 people outside the Orange County courthouse in what turned out to be a successful effort to oppose the plea deal. She doesn't want other crime victims to feel as helpless as she did before the rally.

"Criminals are read their rights. Victims are told, 'Just go on with your life,'" said Wenskunas, 39, who owns a catering business.

She is among the supporters of Proposition 9 on the Nov. 4 ballot, which seeks to place rights for crime victims in the state Constitution. Supporters say criminals are often coddled while victims are left to fend for themselves.

Opponents say the proposal would tip the scales of justice too far, potentially violating defendants' rights and conflicting with federal court rulings.

That initiative follows voter approval of the "Victims' Bill of Rights" in 1982. That measure wrote numerous victims' rights into law but not into the Constitution. It gave victims the right to be told when criminals are nearing release, to be notified of criminal proceedings and to participate in sentencing and parole hearings.

Proposition 9 goes further.

Prosecutors would be required to consult with victims on what charges to file, judges would have to consider victims' safety when setting bail, and victim restitution would get priority over fines and fees.

Victims could refuse to be interviewed or provide evidence, testimony or confidential information to defendants.

Under the initiative, criminals denied parole from their life sentences might not get another hearing for 15 years, and parolees could be sent back to prison without legal representation.

"What we're asking is equal justice," said Harriet Salarno of Auburn, president of Crime Victims United of California. "We're not taking anything away from the criminal. We're just asking the same rights be afforded to us in the Constitution."

Salarno formed Crime Victims United of California after her daughter, Catina, was murdered by a former boyfriend in 1979.

Jakada Imani also knows what it feels like to be victimized by violent crime, but says Proposition 9 goes too far.

He had two brothers wounded by gunfire in recent years. One brother was struck in the head by a stray bullet in Sacramento. The other was hit when Oakland gang members opened fire on a family gathering, killing his brother's best friend.

"This initiative can start to blur the line between accused and guilty," said Imani, executive director of the Oakland-based Ella Baker Center for Human Rights, which promotes alternatives to incarceration. "It tips over into politicizing victims and crime."

The measure could conflict with certain federal laws and court rulings.

It would reverse the state's agreement to provide attorneys to all ex-convicts facing revocation of their parole, an agreement struck in the settlement of a federal class-action lawsuit. Proposition 9 would require the state to provide attorneys only for parolees who can't afford to hire an attorney and can't represent themselves because they lack sufficient education or are mentally incapacitated.

It also would amend the state Constitution to prohibit releasing inmates early as part of a mandate to ease crowding in prisons or county jails. The Legislature and county boards of supervisors would be required to provide enough money to house inmates for their full sentences.

That runs counter to federal court orders capping the number of inmates who can be housed in 20 jails throughout the state. Twelve more counties have a self-imposed cap.

There is no cap on the state prison population, but a special panel of three federal judges could impose one after a trial scheduled for November.

Supporters and opponents of Proposition 9 agree that federal law or court decisions would supersede the state Constitution. Supporters said the initiative would allow alternatives to being jailed, such as home detention or using tracking devices.

The nonpartisan Legislative Analyst's Office projected that keeping inmates in jail or prison longer under Proposition 9 could cost the state and counties hundreds of millions of dollars a year. It estimated the state could save tens of millions of dollars annually by reducing parole hearings.

Currently, inmates serving life sentences are entitled to a hearing every one- to five years. The proposition would permit hearings every three- to 15 years. Inmates could petition for a quicker hearing if they present evidence of rehabilitation.

The proposition, which proponents dubbed "Marsy's Law," has a troubled history.

It's named for Marsy Nicholas, a 21-year-old University of California, Santa Barbara student who was murdered by her boyfriend in 1983. Marsy's mother was shocked to run into her daughter's killer days later at a grocery store, after he was released on bail without the family's knowledge. He eventually was convicted and died in prison.

The incident prompted Marsy's brother, Broadcom co-founder Henry T. Nicholas III, to spend \$4.8 million to get Proposition 9 on the ballot.

But the billionaire was indicted in June on federal securities fraud and drug charges, alleging he spiked the drinks of business associates with Ecstasy and maintained a drug warehouse. He has pleaded not guilty.

In a further oddity, two imprisoned followers of 1960s cult leader Charles Manson challenged the official ballot arguments used by Proposition 9 supporters.

Bruce Davis and Leslie Van Houten, who have been denied parole repeatedly, objected to being named as examples of inmates who force taxpayers to "spend millions of dollars on hearings for dangerous criminals that have virtually no chance of release."

They argued they would have been freed long ago had it not been for their association with Manson and that their parole hearings cost taxpayers little. A Sacramento County judge dismissed their challenge in August.