

January 30, 2014

Hon. Kamala D. Harris  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to criminal penalties and resentencing for individuals convicted of certain crimes (A.G. File No. 13-0060).

## Background

Sentencing law generally defines three types of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as violent include murder, robbery, and rape. While almost all violent felonies are also considered serious, other felonies are defined only as serious, such as assault with intent to commit robbery. Felonies that are not classified as violent or serious include grand theft (not involving a firearm) and possession of a controlled substance. A misdemeanor is a less serious offense. Misdemeanors include crimes such as assault, petty theft, and public drunkenness. An infraction is the least serious offense and is generally punishable by a fine.

***Felony Sentencing.*** Offenders convicted of felonies can be sentenced as follows:

- ***County Jail.*** Felony offenders who have no prior or current convictions for serious, violent, or sex offenses are generally sentenced to county jail. Courts may sentence such offenders to spend their entire sentence in county jail. Alternatively, courts may require such offenders to spend a portion of their sentence in jail and a portion of their sentence in the community under supervision of a county probation officer. Offenders who violate the terms of their community supervision are typically returned to county jail.
- ***State Prison.*** Felony offenders who are ineligible for county jail because of their criminal history are sentenced to state prison. Upon release from prison, offenders with a current serious or violent offense are supervised in the community by state parole agents. The remainder of offenders are generally supervised by county

probation departments. Offenders who violate the terms of their supervision are typically placed in county jail.

- ***Felony Probation.*** Instead of sentencing felony offenders to county jail or state prison, a court may place an offender on felony probation under the supervision of a county probation officer, depending on the offender's criminal history. Offenders who violate the terms of their community supervision could be subject to the felony sentence that they would have otherwise received, such as being sentenced to state prison.

***Misdemeanor Sentencing.*** Under current law, offenders convicted of misdemeanors may be sentenced to county jail, misdemeanor probation, a fine, or some combination of the three. Offenders placed on misdemeanor probation are supervised in the community by a county probation officer and may be placed in jail if they violate the terms of their community supervision.

California law also gives law enforcement and prosecutors the discretion to charge certain crimes as either a felony or a misdemeanor. These crimes are known as "wobblers." The sentencing decision on wobblers is left to the court, with the court's decision generally based on the specific circumstances of the crime and the criminal history of the offender.

## Proposal

***Changes to Existing Penalties.*** This measure reclassifies certain non-violent property and drug offenses that are currently wobblers or felonies to misdemeanors with a maximum penalty of less than one year in county jail. The measure limits eligibility for these reduced sentences to offenders who have not committed certain severe crimes specified in the measure—including murder and certain sex and gun felonies. Specifically, the measure changes the penalties for the following crimes:

- ***Petty Theft.*** Under current law, theft of money or property between \$50 and \$950 (referred to as petty theft) is generally a misdemeanor. However, under certain circumstances such a crime can be charged as a felony. For example, this can occur if the crime involves the theft of certain property (such as firearms or automobiles) or if the defendant served time in prison or jail as a result of (1) three or more prior convictions for certain theft-related crimes or (2) a prior conviction for one of these crimes and a serious, violent, or sex offense. Under this measure, petty theft would be a mandatory misdemeanor. However, the measure creates some exceptions under which certain offenders could still be eligible for felony charges, depending on their criminal history
- ***Shoplifting.*** Under current law, shoplifting property under \$950 is generally a misdemeanor crime. However, such crimes can also be charged as burglary, which is a felony. Under this measure, shoplifting property under \$950 would become a mandatory misdemeanor and could not be charged as burglary.
- ***Receiving Stolen Property.*** Under current law, individuals found in possession of stolen property may be charged with receiving stolen property, which is a wobbler

crime. Under this measure, receiving stolen property under \$950 would become a mandatory misdemeanor.

- ***Writing Bad Checks and Check Forgery.*** Under current law, it is a wobbler crime to (1) forge a check of any amount, (2) write a bad check worth more than \$450, or (3) write a bad check for less than \$450 in cases where the defendant has previously been convicted of certain crimes related to forgery. Under this measure, forging a check worth less than \$950 would become a mandatory misdemeanor except that a defendant who commits identity theft in connection with forging a check could still be charged with a felony. The measure also makes writing a bad check worth less than \$950 a mandatory misdemeanor, except that a defendant who has three or more convictions for certain crimes related to forgery could still be charged with a felony.
- ***Drug Possession.*** Under current law, possession of most controlled substances (such as cocaine or heroin) can be charged as a misdemeanor, a wobbler, or a felony. This measure makes such crimes a mandatory misdemeanor. However, the measure would not change the penalty for possession of marijuana, which is currently either an infraction or a misdemeanor.

***Resentencing of Previously Convicted Offenders.*** This measure allows offenders currently serving felony sentences for the above crimes that it reclassifies as misdemeanors to apply to be resentenced by the court as misdemeanants. Offenders would have three years after the enactment of the measure to apply for resentencing, unless they can show good cause for a delayed application. The measure limits eligibility for resentencing to offenders who have not committed certain severe crimes including murder and certain sex and gun felonies. In addition, the measure states that a court is not required to resentence an offender if the court finds it likely that the offender will commit one of the severe crimes specified in the measure. Offenders who are resentenced—regardless of whether they are in prison or jail—would be subject to one year of supervision on state parole, unless the judge chooses to waive that requirement.

In addition, certain offenders who have already completed a sentence for a felony the measure reclassifies as a misdemeanor could apply to the court to have their felony conviction reclassified. The measure limits eligibility for reclassification to individuals who have not committed one of the specified severe crimes.

***Funding for Truancy Prevention, Treatment, and Victim Services.*** The measure requires the Department of Finance (DOF) to calculate annual savings to the state from the enactment of the measure and the Controller to annually transfer that amount from the General Fund into a new special fund—the Safe Neighborhoods and Schools Fund. Under the measure, monies in the fund would be continuously appropriated without further legislative action and allocated annually as follows:

- 25 percent to the State Department of Education to administer grants aimed at reducing truancy, drop-outs, and victimization among K-12 students in public schools.
- 10 percent to the Victim Compensation and Government Claims Board for victim services grants.

- 65 percent to the Board of State and Community Corrections to administer a grant program to public agencies aimed at supporting mental health and substance abuse treatment services and diversion programs for individuals in the criminal justice system.

## **Fiscal Effects**

This measure would have a number of fiscal effects on the state and local governments. The magnitude of these effects would depend on several key factors. In particular, it would depend on the way individuals are currently being sentenced for the felony crimes reclassified by this measure. Currently, there is limited data available on this, particularly at the county level. The fiscal effects would also depend on how certain provisions in the measure are implemented, including how offenders would be sentenced for crimes reclassified by the measure. For example, it is uncertain whether such offenders would be sentenced to jail or misdemeanor probation and for how long. In addition, the fiscal effects would depend heavily on the number of crimes affected by the measure that are committed in the future. Thus, the fiscal effects of the measure described below are subject to uncertainty.

## **State Effects of Sentencing Changes**

The proposed sentencing changes would affect state prison, parole, and court costs. In total, we estimate that the effects described below could eventually result in net state criminal justice system savings of a few hundred million dollars annually. As noted earlier, any state savings would be deposited in the Safe Neighborhoods and Schools Fund and allocated for various purposes specified in the measure.

***State Prison and Parole.*** This measure makes two changes that would result in a reduced prison population. First, changing future crimes from felonies and wobblers to misdemeanors would make fewer offenders eligible for state prison sentences. We estimate that this could reduce the state prison population by a few thousand inmates on an annual basis within a few years. Second, the resentencing of inmates currently in state prison could result in the release of several thousand inmates, reducing state prison costs for a few years following the enactment of the measure.

In addition, we estimate that the resentencing of individuals currently serving prison sentences for felonies that are reclassified as misdemeanors would temporarily increase the state parole population by several thousand parolees over a three year period. This increase in the parole population would temporarily offset a portion of the above prison savings. The prison savings would be further offset to the extent that released inmates are sent back to prison for new crimes.

***State Courts.*** The measure would increase state court costs in a couple of ways. For example, the courts would experience a one-time increase in caseload resulting from the resentencing of offenders currently in prison and the reclassification of those who have already completed their felony sentence. The courts would also incur costs to hold parole revocation hearings for offenders who, after being resentenced under the measure, violate the terms of their parole supervision. However, these costs to the courts would be partly offset. First, because

misdemeanors generally take less court time to adjudicate than felonies, the proposed sentencing changes would reduce the amount of resources needed for such cases. Second, as we discuss in more detail below, the measure would reduce the number of individuals on county community supervision (such as felony probation) and, thus, likely reduce the number of revocation hearings conducted by the courts. Overall, we estimate that the measure could result in a net increase in court costs in the first few years of enactment with net annual savings thereafter.

### **County Effects of Sentencing Changes**

The proposed sentencing changes would also affect county jail and community supervision operations, as well as those of various other county agencies (such as public defenders and district attorneys' offices). We estimate that the effects described below could result in net criminal justice system savings to the counties in the low hundreds of millions of dollars annually.

*County Jail and Supervision Effects.* We estimate that the proposed sentencing changes would have various effects on the number of individuals in county jails. On the one hand, the measure would reduce the jail population as most offenders whose sentence currently includes a jail term would stay in jail for a shorter time period. In addition, some offenders currently serving sentences in jail for felonies that are reclassified as misdemeanors could be eligible for release. On the other hand, the measure would increase the jail population as certain offenders who would otherwise have been sentenced to state prison would now be placed in county jail. In addition, in the near term, a portion of the offenders who are resentenced under the measure could potentially have their parole revoked and be placed in county jail. On balance, we estimate that county jail populations could decline by thousands of inmates within a few years.

We also estimate that county community supervision populations would decline as offenders would generally spend less time under such supervision if they were sentenced as misdemeanants. County probation departments could experience a reduction in their caseloads of thousands of offenders within a few years of the enactment of this measure.

*Other County Criminal Justice System Effects.* As discussed above, the sentencing changes would increase court workload associated with resentencing and parole revocation hearings in the short run, but would reduce workload associated with both felony filings and revocation hearings in the long run. As a result, while county district attorneys' and public defenders' offices (who participate in these hearings) and county sheriffs (who provide court security) could experience an increase in workload in the first few years, their workload would be reduced on an ongoing basis in the long run.

### **Other Fiscal Effects**

*Effects of Increased Services Funded by the Measure.* Under the measure, the above savings would be used to provide additional funding for truancy prevention, mental health and drug treatment, and diversion programs. To the extent that such funding expanded the number of individuals participating in these programs and the programs were effective in making them less likely to be involved in criminal activity in the future, the measure could result in future savings to the state and counties.

***Effects on Government Assistance Programs.*** Under current law, a felony conviction can limit an individual's access to certain government assistance programs. For example, individuals with a drug-related felony are not eligible for the California Work Opportunity and Responsibility to Kids program, which provides temporary financial assistance and employment-focused services to low-income families with minor children. Similarly, individuals convicted of drug-related felonies are often ineligible for the CalFresh program, which provides low-income individuals assistance with food purchases. To the extent the proposed sentencing changes reduced the number of individuals with disqualifying felony convictions, a greater number of individuals would be eligible to participate in certain government assistance programs. This would increase the cost of these programs. These costs could be offset to the extent these programs helped reduce the rate at which these individuals violated the terms of their supervision or were convicted of new crimes. The net effect of these factors is unknown.

Additional state and county costs could occur to the extent that offenders no longer in prison or jail because of this measure commit additional crimes that result in victim-related government costs or require government services, such as government-paid health care for persons without private insurance coverage. Alternatively, there could be offsetting state and local government revenue to the extent that such individuals became taxpaying citizens. The magnitude of these impacts is unknown.

### **Summary of Fiscal Effects**

We estimate that this measure would have the following major fiscal effects:

- Net state criminal justice system savings that could reach the low hundreds of millions of dollars annually, which would be spent on truancy prevention, mental health and substance abuse treatment, and victim services.
- Net county criminal justice system savings that could reach the low hundreds of millions of dollars annually.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance