



January 02, 2018

Hon. Xavier Becerra  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to felony sentencing (A.G. File No. 17-0046, Amendment No. 1).

## Background

***Felony Sentencing.*** There are 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 burglary of an occupied residence. While almost all violent felonies are also considered serious, other felonies—such as selling certain drugs to a minor or making criminal threats of violence—are defined only as serious. Felonies that are not classified as violent or serious include human trafficking and sale of drugs to adults. Offenders convicted of felonies can be sentenced to one of the following:

- ***State Prison.*** Felony offenders who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison. Offenders who are released from prison after serving a sentence for a serious or violent felony are supervised in the community by state parole agents. Offenders who are released from prison after serving a sentence for a felony that is not a serious or violent crime are usually supervised in the community by county probation officers.
- ***County Jail and/or Community Supervision.*** Felony offenders who have no current or prior convictions for serious, violent, or sex offenses are typically sentenced to county jail or supervision in the community by a county probation officer, or both. In addition, depending on the discretion of the judge and what crime was committed, some offenders who have current or prior convictions for serious, violent, or sex offenses can receive similar sentences.

***Three Strikes Sentencing.*** In 1994, the California Legislature and voters (with the passage of Proposition 184) changed the state’s criminal sentencing law to impose longer prison sentences for certain repeat offenders (commonly referred to as the “three strikes” law). Currently, a person who is

convicted of a felony and who previously has been convicted of one or more violent or serious felonies is sentenced to state prison as follows:

- ***Second Strike Offense.*** If the offender has one previous serious or violent felony conviction, the sentence for any new felony conviction (not just a serious or violent felony) is twice the term otherwise required under law for the new conviction. Offenders that receive this sentencing enhancement are referred to as “second strikers.”
- ***Third Strike Offense.*** If the offender has two or more previous serious or violent felony convictions, the sentence for any new serious or violent felony conviction is a minimum of a life term with the earliest possible parole after 25 years. In addition, offenders with two or more previous serious or violent offenses who commit a new nonserious, nonviolent felony can be similarly sentenced to a life term if (1) that felony is a certain offense (such as selling large quantities of drugs) or (2) if the offender’s prior offenses included certain crimes (such as homicide or various sex crimes). Offenders that receive this sentencing enhancement are referred to as “third strikers.”

While state law requires the sentences described above, courts can, under certain circumstances, choose not to consider prior felonies during sentencing—resulting in lesser sentences than required under the three strikes law.

***Sentencing Credits.*** The California Department of Corrections and Rehabilitation (CDCR) awards credits to inmates that reduce the time they must serve in prison. Inmates earn credits by maintaining good conduct and for participating in work, training, or education programs. The amount of good conduct credits an inmate can earn depends on various factors, including their criminal history. For example, inmates serving a term for a violent felony can typically reduce their sentence by up to 20 percent through good conduct, while inmates whose current offense is not a violent felony can typically reduce their sentence by up to 50 percent.

***Prison Release Determination.*** Under current law, most second strikers are automatically released from prison after completing their sentences less any time off they earn through credits. However, those whose current offense is not a violent felony are generally considered for release by the state Board of Parole Hearings (BPH) after completing the full term for their primary offenses. The primary offense is defined as the longest term imposed excluding any additional terms added to an offender’s sentence, such as any sentencing enhancements (including the additional time an inmate serves for being a second striker).

In contrast, third strikers are only released upon approval by the BPH. After third strikers have served the minimum number of years required by their sentence, a BPH panel conducts a parole consideration hearing to consider their possible release. For example, BPH would conduct such a hearing for a third striker sentenced to 25-years-to-life after the third striker served 25 years less any time off the individual earned through credits. If BPH decides not to release the third striker at that hearing, the board would conduct periodic hearings until the offender is released or dies in prison.

## **Proposal**

This measure amends state law to (1) reduce the number of felonies that are considered violent and serious; (2) limit eligibility for a third strike sentence; (3) require resentencing of some third strikers; and (4) require that any state savings resulting from its provisions be spent on education,

prison inmate rehabilitation, and youth crime prevention. We describe these changes in greater detail below.

***Reduces Number of Felonies Considered Violent and Serious.*** Under current law, burglary of an occupied residence and robbery are considered both violent and serious felonies. This measure makes these felonies only serious ones, under certain circumstances. Specifically, burglary of an occupied residence and robbery where the defendant did not inflict great bodily injury and did not use a firearm or dangerous weapon would only be considered serious felonies. The measure also removes making criminal threats of violence from the current list of serious felonies—making the felony offense neither serious nor violent.

***Limits Eligibility for a Third Strike Sentence.*** The measure reduces the number of current offenses that result in a life term under the three strikes law by generally excluding serious felonies and certain other crimes such as selling large quantities of drugs. As a result, an offender whose *new* offense is a serious (but not violent) felony would generally receive a prison sentence that is twice the usual term for the new offense, rather than 25-years-to-life as required under current law.

***Resentencing of Some Current Third Strikers.*** This measure allows third strikers currently serving life terms that would not have received life terms had the measure been enacted at the time they were sentenced to apply for resentencing. These individuals would generally be resentenced as second strikers. The measure states that courts must resentence these individuals and prohibits them from imposing a new sentence that is longer than the original sentence.

***Funding for Education, Inmate Rehabilitation, and Crime Prevention.*** The measure requires that savings to the state, as calculated by the administration, be annually transferred from the General Fund into a new state fund—the People’s Fair Sentencing and Public Safety Act of 2018 Fund. Under the measure, monies in the fund would be allocated as follows:

- 25 percent to elementary, middle, and high schools.
- 25 percent to community colleges and universities of California to offset tuition.
- 25 percent to inmate rehabilitation programs.
- 25 percent to youth crime prevention programs.

## **Fiscal Effects**

***State Criminal Justice Impacts.*** This measure would have a number of fiscal impacts on the state’s correctional system. Most significantly, the measure would reduce the state prison population because its provisions would result in reductions in:

- ***Third Strikers.*** Fewer inmates would be incarcerated for life sentences because of the measure’s provision requiring that such sentences generally only be applied to third strikers whose current offense is violent. In addition, the provision allowing the resentencing of some third strikers would result in some offenders being released to the community or resentenced to shorter prison terms, thereby resulting in a reduction in the inmate population.
- ***Offenders Convicted of Robbery and Burglary.*** Removing certain types of robbery and burglary from the list of crimes that are considered violent would reduce the time inmates convicted of these crimes spend in prison in various ways. For example, some inmates

serving terms for these crimes would become eligible to earn good conduct credits at a higher rate and/or be considered by BPH for release after completing their primary term as a nonviolent offender.

- ***Offenders Convicted of Criminal Threats of Violence.*** Removing criminal threats of violence from the list of crimes that are considered serious would reduce the prison population in various ways. For example, offenders who either have a prior conviction for this crime or commit this crime in the future would generally be subject to shorter prison sentences. In addition, some of these offenders would serve their sentences in county jail or on community supervision instead of in state prison.

The state currently houses about 130,000 inmates. We estimate that the measure could reduce the inmate population by a few thousand initially, due to its resentencing provision, and potentially by more in future years due to its ongoing impact on inmate sentences. The fiscal impact of these population reductions would likely be in the high tens of millions of dollars and could eventually exceed \$100 million annually.

The measure would also have other smaller effects on state correctional costs. For example, the measure would eventually result in reduced state parole costs. This is because offenders who are sentenced to prison for criminal threats of violence would be supervised by county probation—rather than state parole—following their release from prison. In addition, the reduction in the third striker population would reduce the number of parole consideration hearings BPH would need to conduct in the future. Finally, the measure would result in a one-time cost to the state courts related to its resentencing provisions. These provisions would increase court caseloads, which would result in added costs for trial courts that would conduct these resentencing proceedings.

In total, we estimate that the net effects described above would likely be in the high tens of millions of dollars initially and could eventually result in state criminal justice system savings exceeding \$100 million annually. The actual impact would significantly depend on how the provisions of the measure are implemented by various entities, including CDCR, the courts, and prosecutors, as well as the number of offenders that would be affected by the measure. As noted earlier, any state savings as estimated by the administration would be deposited in the People's Fair Sentencing and Public Safety Act of 2018 Fund and allocated for various purposes specified in the measure. To estimate the savings, the administration would have to make various assumptions, such as the state prison population reduction attributable to this measure.

***County Criminal Justice Impacts.*** This measure would result in increased jail and probation costs to counties. This is because some offenders who have current or prior convictions for making criminal threats of violence would serve their sentences in county jails or on county probation, rather than in state prison. In addition, as mentioned above, certain offenders who are sentenced to prison for criminal threats of violence would be supervised by county probation—rather than state parole—following their release from prison.

This measure would also result in a one-time cost to the counties related to its resentencing provisions. For example, these provisions would result in added costs for district attorneys, public defenders, and county sheriffs' departments that would manage and staff these resentencing proceedings. In addition, counties would incur jail costs to house inmates during resentencing proceedings.

In total, we estimate that the measure could result in criminal justice system costs to the counties in excess of \$10 million annually, primarily due to increased county jail and community supervision populations. The actual increase would significantly depend on how the provisions of the measure are implemented by various entities, including the courts, and prosecutors, as well as the number of offenders that would be affected by the measure.

***Other Fiscal Impacts.*** Under the measure, the above state savings would be used to support programs that could reduce participants' likelihood of committing crimes, such as youth crime prevention. Accordingly, the measure could result in future additional savings to the state and counties. This measure could also result in a variety of other state and local government fiscal effects. For example, governments would incur additional costs to the extent that offenders released from prison because of this measure require government services (such as government-paid health care for persons without private insurance coverage) or commit additional crimes. The magnitude and net effect of such 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 would likely be in the high tens of millions of dollars initially and could eventually exceed \$100 million annually. State savings from the measure would be spent on education, inmate rehabilitation, and youth crime prevention programs.
- Increased county costs that could exceed \$10 million annually, primarily due to increased county community supervision populations.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance