

September 24, 2008

**Proposition 5:
Nonviolent Drug Offenses. Sentencing.
Parole and Rehabilitation. Initiative Statute.**

LEGISLATIVE ANALYST'S OFFICE

Presented to:

Senate Public Safety Committee

Hon. Gloria Romero, Chair

Assembly Public Safety Committee

Hon. Jose Solorio, Chair





Main Provisions of Proposition 5

- Drug Treatment Programs.*** This measure expands drug treatment diversion programs for criminal offenders.
- Changes to Prison and Parole Operations.*** This proposition modifies parole supervision procedures and expands prison and parole rehabilitation programs.
- Inmate Credits.*** The proposition allows inmates to earn additional time off their prison sentences for participation and performance in rehabilitation programs.
- Marijuana Penalties.*** This measure reduces certain penalties for marijuana possession.
- Other Changes.*** This measure makes various other changes to state law mainly related to state administration of rehabilitation and parole programs for offenders.



Expansion of Drug Treatment Diversion Programs

- ☑ ***New Three-Track System.*** There are currently three main types of drug treatment diversion programs for criminal offenders: (1) deferred entry of judgment (Penal Code 1000) programs, (2) Proposition 36, and (3) drug courts. This measure expands and largely replaces those existing programs with a new three-track diversion system known as Tracks I, II, and III.

- ☑ ***General Effects of These Provisions.*** In general, the new three-track system:
 - Expands the types of offenders who are eligible for diversion.
 - Expands and intensifies the services available mainly by increasing the state funding available to pay for them.
 - Requires the collection and publication of data, specified reports, and research into the effect of this measure and other drug policy issues.

- ☑ ***How the Three Tracks Differ.*** The three drug treatment tracks vary according to eligibility requirements, period of participation, level of supervision, and when and how sanctions are imposed on offenders who violate program rules or commit new drug-related offenses. Some offenders who have failed in Track I could be shifted to Track II, where they may face more severe sanctions. Offenders who have failed in Track II may be moved to Track III where more severe sanctions would be possible.

- ☑ ***Funding Provisions.*** This measure appropriates \$150 million from the General Fund to the Substance Abuse Treatment Trust Fund (SATTF) for the second half of 2008-09 and \$460 million in 2009-10. This figure would subsequently be adjusted for the cost of living and state population. After a set-aside for administration costs, 15 percent is designated for Track I, 60 percent for Track II, and 10 percent for Track III.



Expansion of Drug Treatment Diversion Programs

(Continued)

- ☑ ***Juvenile Treatment Programs.*** In addition to these new programs for criminal offenders, the measure sets aside 15 percent of the SATTf for a new county-operated program for nonviolent youth under age 18 deemed to be at risk of committing future drug offenses.

- ☑ ***New Treatment Program Commission Created.*** A new 23-member state Treatment Diversion Oversight and Accountability Commission would be created to set program rules regarding the use and distribution of the new funding and other matters.

- ☑ ***“Harm Reduction” Drug Therapies.*** The measure authorizes SATTf funds to be spent on so-called harm reduction drug therapies that “promote methods of reducing the physical, social, emotional and economic harms associated with drug misuse.”



Changes to Prison and Parole Operations

- New Limits on Parole Terms.*** This measure reduces the parole term of offenders whose most recent term in prison was for a drug or nonviolent property crime and who did not have a serious, violent, street gang-related, or sex crime on their record. The measure also provides longer parole terms for offenders whose most recent prison sentence was for a violent or serious felony.

- New Rules for Revocation of Parole Violators.*** This measure would prohibit certain parolees—generally those deemed to have committed what would be termed “technical” or “misdemeanor” parole violations—from being returned to prison for violations of the terms of their parole. Some of them could serve jail time or face other types of punishments such as more frequent drug testing or community work assignments.

- Expansion of Rehabilitation Programs for Offenders.*** All inmates except those with life terms would have to be provided rehabilitation programs beginning at least 90 days before their scheduled release from prison. Parolees would be provided rehabilitation programs tailored to their needs as determined by an assessment, and offenders would be able to request up to a year of rehabilitation services after their discharge from parole.

- Other Parole-Related Changes.*** This measure creates a new 21-member Parole Reform Oversight and Accountability Board, shifts the costs of drug treatment for parolees from counties to the state, and makes other changes affecting supervision of parolees.



Other Major Provisions of Proposition 5

- Expanded Credits Permitted.** State law currently provides credits to certain prison inmates who participate in work, training, or education programs that reduce the prison time the inmates must serve. This measure would permit some inmates who were sentenced to prison for certain drug or nonviolent property crimes to earn more credits to reduce their prison terms based upon such factors as the inmate showing progress in completing rehabilitation programs.
- Penalty for Marijuana Offenses Would Become Infraction.** Current state law generally makes the possession of less than 28.5 grams of marijuana by either an adult or a minor a misdemeanor punishable by a fine of up to \$100 plus additional penalties and fines. This measure would make the possession of this amount of marijuana an infraction rather than a misdemeanor. Adult offenders would pay up to a \$100 fine plus \$100 in additional penalties. Juveniles would complete a drug education program.
- Other Provisions.** Various other provisions of this measure:

 - Reorganize the administration of rehabilitation and parole programs of the California Department of Corrections and Rehabilitation.
 - Expand the size of the Board of Parole Hearings from 17 to 29 commissioners.
 - Require county jails to provide materials and strategies on drug overdose awareness to all inmates before their release.
 - Specify that adults in drug treatment programs would receive mental health services using funding from Proposition 63, a 2004 ballot measure.



Proposition 5: Summary of Major Fiscal Effects

State Operating Costs Potentially Exceeding \$1 Billion Annually. Increased state costs over time primarily for expansion of drug treatment and rehabilitation of offenders due to:

- Increased spending for a new three-track drug treatment diversion system.
- Expansion of rehabilitation programs for prison inmates, parolees, and offenders released from parole.
- Various other changes to state programs, such as a requirement that the state reimburse counties for drug treatment services now provided for certain parolees.

State Operating Savings Potentially Exceeding \$1 Billion Annually. State operating savings over time primarily for prison and parole supervision due to:

- Diversion of additional offenders from state prisons to drug treatment programs.
- Exclusion of certain categories of parole violators from state prison.
- Potential expansion of the credits that certain inmates could receive that would reduce the time they must serve in prison.
- A reduction in the length of time of parole supervision for offenders convicted of drug and nonviolent property crimes.

State Capital Outlay Savings That Could Eventually Exceed \$2.5 Billion. Net one-time savings from constructing fewer prison beds because of a reduction in the inmate population. These savings would be partly offset by costs for additional prison space for rehabilitation programs.

County Operations Costs and Funding—Unknown Net Fiscal Effect.

Increases in county expenditures for new drug treatment diversion programs and juvenile programs would probably be generally in line with the increased funding they would receive from the state. In addition, various provisions could result in unknown increases and reductions in county operating costs and revenues.

County Capital Outlay—Unknown Net Fiscal Effect. Counties could face added capital outlay costs for housing parole violators, but decreased costs from the diversion of some offenders from jails to drug treatment.

Other. Various other fiscal impacts on state and local government costs and revenues from the diversion of additional offenders from prison or jail or the release of some offenders earlier from prison.