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January 22, 1998

Hon. Daniel E. Lungren
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Michelle Olsen

Dear Attorney General Lungren:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the "Gang Violence and Juvenile Crime Prevention Act of 1998" (File No. SA 97 RF 0076), which makes substantial changes to the juvenile justice system and adds new sanctions against adults, gang members, or those who commit certain specified offenses.

Proposal

The initiative proposes changes to the prosecution, sentencing, and incarceration of juvenile offenders. It also expands penalties for gang members, vandals, and other adult criminals. The following summarizes the major provisions of the measure.

Prosecution of Juveniles in Adult Court. Current law allows a minor as young as 14 years old to be tried as an adult for specified offenses using what is referred to as a "judicial waiver" system. Under such a system, the juvenile court holds a "fitness" hearing to determine whether an offender is not fit for the juvenile court. The prosecutor has the burden of proving the juvenile is not fit for juvenile court and should be remanded into the adult court system.

This measure would impose *mandatory* adult court jurisdiction over juveniles age 14 years or older alleged to have committed either capital murder or serious sex offenses. In addition, the measure allows prosecutors to directly file charges against juvenile offenders in adult court under a variety of circumstances. It expands the number of offenses for which 14 and 15 year olds can be tried as adults and it allows for district attorneys to select filing charges in adult court ("direct filing") for those 16 years old or older for over 30 enumerated offenses. Thus, these changes would add a required, or "statutory waiver," and an optional, or "prosecutorial waiver" system, to the current judicial waiver system.

The measure also increases the number of offenses for which minors can be tried as adults and changes the criteria for when a juvenile is considered "unfit" for the juvenile court. Finally, the measure requires mandatory secure detention for juvenile offenders arrested for certain offenses (these provisions are separate from the provisions described more fully below).

Changes in Probation and Other Court Procedures. Under current law, juvenile offenders in counties are subject to a continuum of prevention, intervention, supervision, and detention services which are provided by county probation departments and other county and private agencies. Statewide there are more than 50,000 juvenile offenders under the supervision of probation departments. The majority of juvenile offenders are supervised on informal or formal probation within their communities. The offenders are supervised in their homes or in other placements, such as group homes or foster care homes, or are detained in juvenile halls, ranches, or camps. Current law allows county probation departments to place juveniles, even those accused of felonies, on informal probation without court action while the juvenile court orders formal probation.

The measure makes several changes to juvenile court procedures. The initiative would not allow informal probation for any juvenile offenders accused of committing a felony. Under the measure, all juveniles arrested for a felony would have to appear in court but would be eligible for a newly created "deferred entry of judgement." The measure adds the mandatory requirement that parents or guardians agree to appear before a court if ordered or the juvenile will not be released. The measure would also require, under certain circumstances, that arrest warrants be filed for juvenile offenders who cannot be located. Finally, the measure changes court procedures related to changing placement orders for probationers.

Juvenile Record Confidentiality and Criminal History Content. This measure makes a variety of changes to current law regarding the confidentiality of juvenile arrest and

other criminal history information. These new provisions would change existing procedures for what a court must do to require confidentiality for juvenile offenders.

Also, the measure prohibits sealing of juvenile records for certain serious or violent offenses when a minor was 14 years of age or older. Currently, sealing of these records cannot be ordered until at least six years have elapsed since the commission of the offense.

The measure requires the Department of Justice to report the complete criminal history of any juvenile felon. Currently, most juvenile court proceedings are not recorded in a juvenile offenders' criminal history record at the state level.

Juvenile Incarceration and Detention. Currently, juvenile offenders, after being arrested, are detained in local juvenile halls, usually for short stays. The probation department makes the decision whether or not to book and detain the juvenile offender. Juveniles placed in juvenile halls usually are awaiting court action for very serious or violent offenses. Because of federal law, juveniles under most circumstances cannot be held in adult jail. Consequently, only a very small number of jails have the ability to house juveniles. Ten counties had fewer than 200 jail beds available for juveniles in 1997.

This measure mandates when juveniles must be detained. Currently, county probation departments can determine who will be accepted into juvenile halls, based on overcrowding and the severity of the alleged offense. This measure would mandate that juvenile offenders arrested for over 30 enumerated offenses must be detained until they come before a judicial officer.

Current law allows juvenile offenders convicted in adult court to be housed in the Department of the Youth Authority until they are 18 before being transferred to the Department of Corrections (CDC). This measure requires that all juvenile offenders convicted in adult court who are 16 years of age or older be sent to the CDC rather than the Youth Authority.

Gang Provisions. Current law generally defines gangs as any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of certain enumerated crimes.

This measure provides new prison sentence enhancements (including the death penalty) for crimes committed by gang members, changes the standards for prosecuting crimes related to gang recruitment, expands conspiracy statutes to include gang-

related activities, allows widened use of “wiretaps” against gang members, and requires that gang members register with local law enforcement agencies.

Violent and Serious Felony Offenses. The measure also makes a number of changes in law related to criminal penalties for adults.

Current law provides prison sentence enhancements, restrictive bail and probation rules, and certain prohibitions on plea bargaining, for persons convicted of a “violent offense” or a “serious offense,” as defined in statute. The “Three Strikes and You’re Out” law provides significantly longer prison sentences for offenders previously convicted of a violent or serious offense. In addition, persons convicted of violent offenses must serve at least 85 percent of their prison sentence before they can be released (most other offenders must serve at least 50 percent of their sentence).

This measure would add a number of specific crimes to the list of violent and serious offenses, thus making these additional crimes subject to the provisions of existing law related to violent and serious offenses. In addition, the measure makes statutory changes which ensure that these new specific crimes would count as “strikes” under the “Three Strikes” law.

Future Amendments. The measure provides that it may be amended by a two-thirds vote of the Legislature or approval of the voters.

Fiscal Effect

This measure’s significant changes to the juvenile justice system and enhancements to adult sentencing will result in both costs and savings to the state and local governments. The costs and savings are difficult to accurately estimate because of the lack of juvenile and adult data. Based on the available data and given certain assumptions, the following is our estimate of the magnitude of potential costs and savings for each of the major provisions of this measure.

Prosecution of Juveniles in Adult Court. The measure would result in a reduction in the number of juvenile court fitness hearings, and thus could reduce the state’s costs to operate the juvenile courts. However, these savings would likely be more than offset by additional costs of handling these cases in adult court, where the offenders would be eligible for a variety of procedural and evidentiary hearings and for jury trials. The net court costs are unknown, but could be in the millions of dollars annually.

The measure would also result in additional costs to the counties to house the juveniles in local detention facilities while they await trial. These costs would include both

one-time costs to construct new or expand existing juvenile halls (probably in the tens of millions to potentially hundreds of millions of dollars), as well as ongoing annual operating costs (probably in the tens of millions of dollars).

In addition, by requiring that additional offenders be tried in adult court, the measure could result in an increase in the number of offenders sentenced to the CDC rather than the Youth Authority. It is generally less costly to house an offender in the CDC than the Youth Authority. However, it is not known how this change could affect the *lengths* of sentences of the affected offenders, and thus whether the measure would result in net savings or costs.

Changes in Other Court Procedures. The elimination of informal probation for certain juveniles could result in unknown costs to the state from the increased number of juvenile court proceedings. County costs would increase for probation departments, both to prepare for court proceedings and to enforce the "deferred entry of judgement." There could also be costs to counties associated with the enforcement of "orders to appear," however these costs would probably be minor.

Juvenile Confidentiality and Criminal History. These provisions would result in some savings to counties for not having to seal juvenile records and make arrest data public. There would be unknown, but probably minor, costs to the state and local governments to report the complete criminal histories for juvenile felons to the Department of Justice.

Juvenile Incarceration and Detention. In addition to the provisions noted above related to prosecution of juveniles in adult court, the provisions related to juvenile incarceration and detention for certain specified offenses will result in unknown, but significant, one-time capital outlay costs, and ongoing annual operational costs to counties to house juvenile offenders.

The provisions that transfer inmates from the Youth Authority to the CDC would result in net savings to the state because the cost of housing an inmate at the CDC is less than that of the Youth Authority. The magnitude of these net savings is unknown. In addition, CDC facilities will be full by 2000, resulting in the need for new prisons to house the additional offenders.

Gang Provisions. The measure's gang provisions will result in unknown, but potentially significant, annual state costs resulting from sentence enhancements. These costs would result from gang members staying in prison longer. In addition, because the provisions would result in more state prison inmates, the state would likely incur additional one-time costs to construct prisons to house the inmates.

Local law enforcement agencies would incur unknown annual costs to implement a gang registration process. Police and sheriffs would have to develop systems and processes to register gang members. These costs would be local government responsibilities and vary based on the number of gang members that need to be registered.

Violent and Serious Felony Offenses. This measure's provision adding new serious and violent felonies, combined with ensuring that the new offenses come under the "Three Strikes Law," will result in significant state costs. These costs would increase over time as offenders receive the longer sentences. We estimate that the measure could result in additional annual operational costs of tens of millions to low hundreds of millions of dollars, and one-time capital outlay costs of hundreds of millions of dollars. The new vandalism provisions will result in unknown state and local incarceration costs.

Other Potential Impacts. Finally, the costs of the measure could be offset somewhat from unknown, potential savings to state and local governments to the extent that longer periods of confinement prevent offenders from committing additional crimes, which if the crimes had occurred, would have resulted in costs to the state and local governments.

Summary. This measure will result in unknown major net costs to the state of at least hundreds of millions of dollars annually and one-time costs of at least several hundreds of millions of dollars.

The measure would result in unknown net costs to local governments of at least tens of millions of dollars annually, and tens of millions to hundreds of millions of dollars for one-time costs.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Craig L. Brown
Director of Finance