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December 10, 1999

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

Attention: Ms. Diane Calkins  
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative to amend the state's "Three Strikes and You're Out" law on sentencing of criminal offenders (File No. SA 1999 RF 0057).

**BACKGROUND**

*Three Types of Crimes.* Under state law, there are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime and can result in a sentence of prison, jail, or supervision on probation in the community.

Existing law classifies some felonies as "violent" or "serious." Currently, felonies defined as violent include murder, robbery of a residence in which a deadly or dangerous weapon is used, and rape and other sex offenses. Felonies defined as serious include the same offenses defined as violent felonies, but also include other offenses such as the burglary of a residence. Other felonies, such as drug possession or petty theft with a prior theft, are classified as neither violent nor serious.

**Parole Supervision.** Upon their release from prison, nearly all offenders are required to serve a period of time under the supervision of state parole agents. The time period required for parole depends upon several factors, including the offense that led to the incarceration of the offender and their behavior while on parole. Most offenders are ordinarily subject to a three-year period of parole supervision.

**Three Strikes Law.** In 1994, a statute approved by the Legislature and an initiative approved by the voters both separately enacted nearly duplicate versions of the so-called Three Strikes and You're Out law. The Three Strikes measure imposed longer prison sentences upon an offender when it was charged and proven true in court that he or she had prior convictions for crimes classified as either violent or serious.

The Three Strikes law specifically requires that offenders be sentenced in accordance with the following provisions:

- If the offender has *one* previous serious or violent felony conviction on his or her criminal record, the mandatory prison sentence upon conviction for *any* new felony is *twice* the term otherwise required by law for the new conviction. These offenders are sometimes referred to as "second-strikers."
- If the offender has *two or more* previous serious or violent felony convictions on his or her criminal record, the mandatory prison sentence upon conviction for *any* new felony is *at least 25 years to life*. These offenders are sometimes referred to as "third-strikers."

**Effect of the Three Strikes Law.** As a result of these and other provisions of the Three Strikes law, the period of time many offenders must serve in prison has increased significantly.

Each month, approximately 900 offenders are sent to state prison as second-strikers with Three Strikes law sentences that are doubled in length because they had previously been convicted of one violent or serious crime. Approximately 100 offenders per month are sentenced to prison as third-strikers with sentences of 25 years to life or more because they had two or more violent or serious crimes on their record. As of June 30, 1999, about 35,000 inmates had been convicted under the Three Strikes law and were being held in state prison.

## PROPOSAL

This measure proposes to repeal the version of the Three Strikes and You're Out law that was enacted by the Legislature, and to repeal and reenact in an amended form the version of the Three Strikes law enacted by the voters through the 1994 initiative. In

effect, this measure provides that certain offenders would no longer be subject to the longer prison sentences now required under the Three Strikes law.

*New Crime Must Be Violent or Serious.* Specifically, this measure would provide that an offender would be subject to the longer sentences mandated under the Three Strikes law only if the new crime for which they were convicted was classified as a violent or serious felony. Thus, an offender convicted for committing a nonviolent or nonserious crime would not be subject to the longer sentences required under the Three Strikes law, even if he or she had one or more violent or serious felonies on their criminal record.

*Resentencing of Offenders.* This measure states that its provisions shall be enacted retroactively to March 1994, when the legislative version of the Three Strikes law first took effect. The initiative requires that the Director of the California Department of Corrections (CDC) determine which inmates who were sentenced under the Three Strikes law during that period are eligible to have second-strike or third-strike sentences revised as a result of the initiative and to notify the appropriate Superior Court. The courts are to resentence all such offenders no later than 180 days after this initiative takes effect. Some resentenced offenders would likely be released immediately to the community, some might be resentenced to jail terms, and others would probably be returned to prison with shorter sentences than they had before. Offenders who had already completely served their Three Strikes sentence and been released from prison would also be resentenced in accordance with the provisions of this measure. The only practical effect of this provision for many of them is to change their sentencing records.

#### **FISCAL EFFECT**

This measure would have a significant fiscal effect on both state and county governments. These effects are discussed below.

#### **State Prison System**

*Short-Term Effect.* The CDC has estimated that the state's prison population would initially decrease by as many as 13,000 inmates. Thus, prison operation costs would be reduced by as much as \$270 million in the first full year of implementation due primarily to the resentencing provisions in this measure.

Many current prison inmates would be released almost immediately upon being resentenced because they would already have been in prison for as long or longer than their new sentence would require. Many others would be released within a few years because they would still have some additional prison time to serve after being resentenced. This initiative would probably speed up the release from prison within

several years of as many as 21,000 second-strikers and 3,500 third-strikers subject to being resentenced.

Among other factors, the CDC estimate of the impact of this measure on prison operations takes into account the likelihood that many offenders released due to resentencing would subsequently be prosecuted for new crimes or parole violations and returned to state prison.

*Long-Term Effect.* This initiative would slow future growth in the state prison system because many offenders would now receive shorter prison sentences, or avoid a prison sentence altogether, instead of facing a mandatory Three Strikes law prison term. However, this slowdown in prison population growth would be partly offset to the extent that offenders released earlier to the community as a result of this measure committed additional crimes or parole violations that resulted in their return to state prison.

Taking these and other factors into account, CDC has estimated that when the full operational effect is realized the state would be able to operate with as many as 23,000 fewer prison beds for a net savings on prison operating costs of as much as \$485 million annually. Also, assuming that growth in the state inmate population would otherwise continue, the state would be able to postpone the construction of prison beds that would otherwise have been needed at an earlier date, allowing a one-time avoidance of capital outlay costs of up to \$1 billion. These savings would be reduced to the extent that there is a deterrent impact to longer sentences, which is reversed by the provisions of this initiative.

### **State Parole Supervision**

*Short-Term Effect.* Because this measure would speed up the release of as many as 24,500 offenders from state prison, it is likely to increase state costs for the supervision on parole of these same offenders in the community. These costs would be partly offset because some of the released offenders would be eligible for immediate discharge from parole. Also, some offenders would be removed from parole caseloads after being prosecuted and returned to state prison for new parole violations and crimes.

Taking these and other factors into account, the CDC has estimated that the state would experience a net increase in its parole caseload of as many as 7,500 offenders at an added state cost of as much as \$16 million annually. This rapid increase in the parole caseload and parole supervision costs would probably drop off somewhat in subsequent years as many offenders successfully completed their terms of parole.

*Long-Term Effect.* The CDC has estimated that as many as 6,000 additional parolees would remain on the parole caseload in the long term as a result of this measure. Be-

cause many offenders would now serve relatively shorter prison sentences, parole case-loads would experience a corresponding increase at a state cost of as much as \$13 million annually.

### **Court-Related Activities**

*Short-Term Effect.* We estimate that the resentencing provisions in this measure could affect as many as 42,500 offenders—at least 24,500 state prisoners and as many as 18,000 other offenders who completed a Three Strikes prison sentence and were subsequently released from prison. The resentencing provisions would probably result in significant one-time state and county costs for court time, transportation of offenders from prisons to court, and other related activities, potentially in the several tens of millions of dollars. The exact costs would depend upon the specific resentencing policies and procedures adopted in response to this measure. We assume that many of the resentencing cases, particularly for those offenders no longer in state prison, would be handled through an expedited legal process.

The implementation costs would also vary to the extent that the courts were successful in identifying, locating, and resentencing offenders who had completed their Three Strikes prison terms and who were not in state custody at the time this measure took effect. It is likely that some offenders would not be found and thus would not be resentenced.

This measure would also result in short-term costs to the state and counties to the extent that the offenders released from prison after resentencing committed new crimes that resulted in additional prosecutions and jury trials by the criminal justice system.

Taking these and other factors into account, we estimate that this measure would result in one-time costs, probably in the range of several tens of millions of dollars that would be shared by the state, which funds the trial court system, and by counties, which fund prosecutors, defense counsel for indigent offenders, and other local criminal justice system costs.

*Long-Term Effect.* This initiative could result in significant ongoing annual savings to the state and counties because fewer offenders might bring their cases to jury trials. Because this initiative would result in many fewer offenders being subject to a longer Three Strikes sentence, it is likely that fewer of them would contest their cases in a trial. We estimate the net ongoing savings from these factors to be as much as several tens of millions of dollars annually. Any such savings would be shared by the state and county governments on a statewide basis.

## County Jails and Probation

*Short-Term Effect.* Some offenders released to the community as a result of this measure will subsequently be prosecuted and convicted for new crimes. Before their criminal cases were resolved in the courts and they were returned to state prison, these offenders would spend time in county jails. We estimate that as many as 900 additional jail beds would be needed to hold such offenders at a one-time additional cost to counties for jail operations of as much as \$15 million.

*Long-Term Effect.* This measure would result in ongoing county costs for jail operations because some offenders that would otherwise have been sentenced to prison will instead be sentenced to jail. Counties will also face additional jail operation costs for holding offenders who were released from or diverted from prison as a result of this initiative and subsequently committed new crimes that resulted in their return to jail.

Taking these and other factors into account, we estimate that county governments would experience a net cost increase in the long run of as much as \$15 million on a statewide basis for the operation of up to 900 additional jail beds.

## Summary of Fiscal Effects

This measure could result in net savings to the state of as much as \$250 million in the short term primarily due to lower costs for prison operations. These ongoing net savings could grow to as much as \$500 million in the long term. The state might also be able to delay the future construction of additional prisons for a one-time avoidance of costs in the long term of up to \$1 billion.

County governments could face increased costs of as much as several tens of millions of dollars in the short term due primarily to the requirement in this measure that certain Three Strikes offenders be resentenced by the courts. In the long run, this initiative could result in a net savings to counties on a statewide basis of as much as \$15 million annually.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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B. Timothy Gage  
Director of Finance