



December 27, 2001

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

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as "The Three Strikes Act of 2002" (File No. SA2001RF0043).

Background

Three Strikes Law. The Three Strikes measure, adopted in 1994, 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 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."

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.

Proposal

This measure proposes to amend the Three Strikes and You're Out law to provide that certain offenses would no longer be considered serious or violent for the purposes of sentencing under the Three Strikes Law. In addition, offenders who committed nonviolent and nonserious offenses would no longer be subject to the longer prison sentences now required under the Three Strikes law.

New Crime Must Be Violent or Serious. This measure would provide that an offender would be subject to the longer sentences mandated under the Three Strikes law only if the conviction for the new crime was for 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.

Limited Definition of Serious or Violent Prior Crimes. This measure establishes that an offender is eligible for sentence enhancements under the Three Strikes law only if prior convictions were for certain serious and/or violent offenses. An offender with prior convictions for felonies which the initiative does not specifically define as serious and/or violent felonies would not have the prior convictions counted as strikes for the purposes of receiving an enhanced sentence for the current offense.

Resentencing of Offenders. This measure states that its provisions shall be enacted retroactively to March 1994, when the Three Strikes law first took effect. The initiative requires that inmates who were sentenced under the Three Strikes law during that period, and who would not be subject to such a sentence under the initiative, be resentenced by the same court in which they were originally sentenced. 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. This measure would result in reduced prison operating costs. Under this measure, inmates would be released because of the resentencing provisions. This could result in significantly reduced prison operating costs ranging from the tens of millions of dollars to several hundreds of millions of dollars annually. In addition, the state could potentially defer several hundreds of millions of dollars in capital outlay costs associated with the construction of prison beds that would otherwise have been needed at an earlier date.

State Parole Supervision. As indicated above, the measure would accelerate the release of state prisoners. This would add to the parole caseload. The cost associated with this increase in the parole caseload is unknown, but potentially up to several tens of millions of dollars annually. The actual amount would vary depending upon the number of offenders eligible for direct discharge from prison, as well as the number removed from parole as a result a new prison term.

Court-Related Activities. The resentencing provisions would probably result in unknown, but significant one-time costs potentially in the several tens of millions of dollars for the state. This includes costs for court time, transportation of offenders from prisons to court, and other related activities.

The court-related cost would be offset by unknown savings to the state. Since the initiative would result in fewer offenders being subject to a long Three Strikes sentence, it is likely that fewer would contest their cases in a trial, resulting in additional but unknown savings for the state for court-related activities.

County Jails and Probation. Some offenders released from prison because of this measure will be subsequently prosecuted and convicted for new crimes. Before their criminal cases are resolved in the courts, these offenders will likely spend time in county jails. In addition, some offenders that would otherwise have been sentenced to prison will instead be sentenced to jail. We estimate that 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 a couple tens of millions of dollars.

Summary of Fiscal Effects

This measure would result in unknown, but significant net savings for the state. The state could face increased costs of several tens of millions of dollars for court-related activities and parole supervision, which could be offset by savings for the state ranging from several tens of millions of dollars to several hundreds of millions of dollars due to lower prison operating costs. The state might also be able to defer several hundreds of millions of dollars in capital outlay costs associated with delayed construction of additional prison beds.

County governments could face initial increased costs of as much as several tens of millions of dollars for jail-related costs which could be more than offset by future ongoing savings related to fewer new cases challenging sentences issued under the Three Strikes law.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance