

November 18, 2003

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 and Child Protection Act of 2004" (File No. SA2003RF0047 Amendment #1-S).

PROPOSAL

The proposed initiative amends the Three Strikes law to require that second and third strike offenses must be for serious or violent crimes. The initiative also amends the law relating to sex crimes against children to require lengthier sentences and counseling services for some offenders. Each of these changes is described below.

Three Strikes Law

The Three Strikes measure, adopted in 1994, imposed longer prison sentences upon an offender who had prior convictions for crimes classified as either violent or serious. The law specifically requires that an offender receives a prison sentence that is *twice* the term otherwise required by law for a conviction of *any* new felony offense if he or she has *one* prior serious or violent felony 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."

New Crime Must Be Violent or Serious. This measure amends the Three Strikes law to 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. In addition, this proposal stipulates that prior strike offenses must have been brought and tried separately from the new offense.

Changes in Felonies Considered Violent or Serious. This measure changes some offenses currently considered to be serious or violent under the Three Strikes law. For example, the proposal removes attempted burglary, conspiracy to commit assault, and some arson offenses from the list of serious and violent crimes.

Resentencing of Offenders. This measure states that its Three Strikes-related provisions shall be enacted retroactively to March 1994, when the Three Strikes law first took effect. The proposal requires that inmates serving an indeterminate life term and who received a sentence enhancement under the Three Strikes law be resentenced in court no later than 180 days after the initiative takes effect.

Sex Offenders of Children

Current law requires that anyone convicted of the act of sexual penetration or oral copulation with a minor under the age of 14 and who is more than 10 years younger than the offender shall receive a prison sentence of 3, 6, or 8 years.

This initiative would increase the sentence for such offenses to 6, 8, or 12 years on the first offense. The offender shall also receive counseling services in prison and for at least the first year on parole. Also, under this measure, if the victim is under the age of ten, the court would have the discretion to sentence the offender convicted of these offenses to imprisonment of 25 years to life. This measure also requires that a second conviction of these offenses shall result in a sentence of 25 years to life.

FISCAL EFFECT

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

Three Strikes Law

State Prison System. This measure makes several changes which would result in reductions in state prison operating costs ranging from 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.

The provisions resulting in these savings include the following. The provision allowing the resentencing of some inmates would result in some offenders being released to the community or resentenced to jail terms, thereby resulting in a reduction in the inmate population and associated prison operating costs. In addition, the requirement that second and third strikes must be serious or violent will result in fewer inmates receiving Three Strikes sentence enhancements for nonserious and nonviolent crimes. Finally, the provision removing some crimes from the list of serious and violent

crimes will likely result in a reduction in sentence length served by some offenders with prior convictions for these offenses.

State Parole Supervision. Due to the shorter sentences served by some inmates, this measure would accelerate the release of state prisoners. This would add to the parole caseload. The costs associated with this increase are unknown, but potentially up to several tens of million 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 of a new prison term.

Court-Related Activities and County Jails. 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 and county governments. This includes costs for court time, attorneys, transportation of offenders from prisons to court, jail beds for inmates being resentenced, and other related activities. The additional court caseload caused by these provisions may also cause a short-term backlog of existing criminal and civil cases awaiting trial.

In addition, this initiative will place an additional financial and population burden on county jail systems. Some offenders that would otherwise be sentenced to prison will be sentenced to jail for their nonserious and nonviolent crimes. Also, 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. We estimate that additional jail beds would be needed to hold offenders at an additional cost to counties for jail operation of as much as a couple of tens of millions of dollars annually.

Sex Offenders of Children

This measure would lengthen the sentence for specified sex offenses against children, thereby resulting in increased state incarceration costs. These costs would likely range from tens of thousands of dollars to as much as a couple hundred thousand dollars annually beginning in 2007.

This measure also requires counseling services to be made available to specified sex offenders in prison and on parole. The California Department of Corrections (CDC) estimates that such counseling services will cost approximately \$750,000 annually, plus \$1.5 million for program start-up costs. The CDC estimates parolee counseling services to cost several hundreds of thousands of dollars annually beginning in 2008.

SUMMARY OF FISCAL EFFECT

This measure would have the following fiscal effects:

- Unknown, but significant net savings to the state ranging from several tens of millions of dollars to several hundreds of millions of dollars annually due to lower prison operating costs partially offset by costs associated with court-related activities, parole supervision, and the incarceration of and counseling services for sex offenders.
- Potential state deferral of several hundreds of millions of dollars in capital outlay costs associated with delayed construction of additional prison beds.
- Increased one-time costs of up to several tens of millions of dollars for jail and court-related costs; ongoing costs of a couple of tens of millions of dollars.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Steve Peace
Director of Finance