

March 1, 2006

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

Attention: Ms. Patricia Galvan
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as "The Repeat Criminal Offender/Three Strikes Fair Sentencing Act of 2006" (File No. SA2006RF0005, Amdt. #2-NS).

Current Law

Types of Felonies. There are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. Existing law classifies felonies as "violent" or "serious," or both. Examples of felonies currently defined as violent include murder, robbery, and rape and other sex offenses. Felonies defined as serious include violent felonies, but also include other offenses such as burglary of a residence and assault with intent to commit robbery. There are other felonies not classified as violent or serious, such as grand theft and possession of a controlled substance.

State law defines the punishment options for felonies. While some felonies are punishable by life terms in prison, most felony punishments are determinate, or set sentences based on the "triad" sentencing structure. The triad sentencing structure provides the court with three sentencing options for each crime. For example, a first degree burglary offense is punishable by a term in prison of two, four, or six years. The middle term is the presumptive term to be given to an offender found guilty of the crime. The upper and lower terms provided in statute can be given if there are circumstances concerning the crime or offender that warrant more or less time in state prison.

State Prison. Approximately 17 percent of persons convicted of a felony are sent to state prison. The rest are supervised on probation in the community, sentenced to county jail, or both. The state currently operates 33 prisons, housing an average of about

5,000 inmates each. It costs a few hundreds of millions of dollars to construct a new prison.

Work Credits. State law requires the California Department of Corrections and Rehabilitation (CDCR) to apply work credits to all qualifying inmate assignments, such as work and education programs. An inmate's eligibility for work credits varies depending on the crime committed, the date it was committed, and previous felony convictions. In general, the credit system is structured to allow inmates convicted of nonviolent felony offenses to earn the greatest sentence reduction and inmates convicted of violent felonies to earn the least sentence reduction.

Sentence Enhancements. In addition to the prison term provided in state law for the crime committed, courts can also add sentence enhancements. These enhancements are additional time in prison for specified factors related to the crime or offender, such as whether a gun was used in the commission of the crime or if the offender has certain prior offenses on his/her record.

One sentence enhancement is the Three Strikes law. This law requires that a person who is convicted of a felony and who has been previously convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- **Second Strike Offense.** If the person has *one previous* serious or violent felony conviction, the sentence for *any new* felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders convicted under this provision are referred to as "second strikers."
- **Third Strike Offense.** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is life imprisonment with the minimum term being 25 years. Offenders convicted under this provision are referred to as "third strikers."

Parole Decisions for Lifer Inmates. Whereas most inmates are released from prison after serving a determinate sentence as described above, about 17 percent of all inmates are lifers with the possibility of parole. These "lifers" are sentenced to prison terms such as 25 years to life, meaning they must serve a minimum of 25 years in prison and are only eligible for release to parole based on a decision by the Board of Parole Hearings (BPH), a division of CDCR. If BPH, as a result of the hearing, denies parole release for a lifer, BPH determines when the inmate will be eligible for a subsequent hearing. Lifers whose current offense is not murder are eligible for a new hearing within two years of the denial. Lifers whose current offense is for murder are eligible for subsequent hearings within five years.

Parole Terms. Inmates released from prison are placed on parole supervision. Depending on their specific crimes, offenders are generally placed under parole supervision for a minimum period of either three or five years. The parole supervision period can be lengthened to four or seven years from the initial release date if an inmate is returned to prison by his/her parole agent for a violation of parole. Parolees can be discharged from parole supervision earlier than the minimum period if they have been on parole continuously for a specified period—usually one year—and the department approves early discharge.

Parole Revocations. When parolees violate conditions of their parole, they can be returned to prison by their parole agent and BPH. The maximum prison term for this type of revocation is one year. If a parolee commits a new crime, he can either be returned to prison by his parole agent as described above, or he can be sentenced in court and receive a prison sentence for his new crime.

Proposal

Redefines Types of Felonies. This measure changes the way that felonies are classified in statute. Felony offenses currently listed as violent felonies would be referred to as “Class A” felonies. Serious offenses would be reclassified as “Class B” felonies, and those felonies that are not listed as serious or violent would be identified as “Class C” felonies.

Changes to Sentence Enhancements. The measure would also make changes to sentence enhancements for repeat offenders. The measure does this in several ways, most of which would result in longer sentences for repeat offenders. We discuss the most significant of these changes below.

- ***Changes to Three Strikes Law.*** This measure increases sentences for second strikers by requiring that the presumptive sentence for these offenders is twice the upper term, rather than twice the middle term as is currently the case. The measure also provides courts with more options for sentencing third strikers, depending on the nature of the current offense (see Figure 1 below). These changes would permit courts to sentence some third strikers to shorter life terms than current law allows, as well as permit determinate sentences for third strikers whose current offense is nonviolent. Finally, the measure would allow resentencing of third strikers currently in the inmate population whose current offense is nonserious and nonviolent. Under the measure, eligible inmates would submit resentencing applications to CDCR for initial review. If CDCR determines that the inmate should be considered for resentencing based on factors such as the inmate’s criminal history and in-prison behavior, the inmate’s application is provided to the courts for a resentencing hearing. The court would then resentence the inmate to a term

consistent with the Three Strikes law as amended by the measure, a sentence that would most likely be shorter than under current law.

Figure 1
Sentencing Options Under Three Strikes Law:
Current Law Compared to Proposed Measure

New Crime	Current Law	Proposed Measure
2nd Strikers		
Any felony	Twice middle term.	Twice upper term.
3rd Strikers		
Nonserious, nonviolent felony (Class C)	Life term, minimum 25 years.	(1) Life term, minimum length of three times upper term; (2) Determinate term, minimum 9 years.
Serious felony (Class B)	Life term, minimum 25 years.	(1) Life term, minimum 15 years; (2) Determinate term, minimum length of three times upper term.
Violent felony, punishable by determinate term on first offense (Class A)	Life term, minimum 25 years.	Life term, minimum 15 years.
Violent felony, punishable by life term on first offense (Class A)	Life term, minimum 25 years.	Life term without possibility of parole.

- Creation of New Sentence Enhancements.** The measure creates new sentence enhancements that are not currently in statute. For example, the initiative would require that inmates who are convicted of a felony and have prior nonserious, nonviolent felony convictions be sentenced to two times the upper term for the new offense. In addition, the measure requires that if an offender is convicted of any felony and has a prior conviction for a specified violent felony—murder and rape, for example—the sentence for the new offense is life in prison for 25 years, though the measure also allows for a lesser sentence in the furtherance of justice.
- Other Changes that Increase Sentences.** The measure also makes a number of other changes that would likely increase sentences served for some offenders. These changes include reducing work credits some inmates are eligible to earn, requiring that in some cases sentence enhancements be enforced at twice or three times the length provided under current law, requiring that some sentence enhancements be served consecutively with the felony conviction term, and adding additional crimes to the list of serious and violent offenses.

Creates Informational Program for Inmates. The measure requires CDCR to provide all inmates eligible for parole with a course that provides the inmates with information on the consequences of committing new crimes after release from prison. In addition, the measure eliminates the ability of inmates to earn work release credits until they have completed this course.

Changes Parole Denial Periods for Lifer Inmates. The measure increases the minimum denial period for lifer suitability hearings from one to two years, as well as increases the maximum denial period to five years for all lifers.

Lengthens Parole Terms. The measure increases the parole term served by offenders from three years, as it is currently for most parolees, to a term that is equal to the parolee's prison sentence, with the minimum term being at least three years. In addition, the measure removes the current maximum parole period of four or seven years for parole violators who return to prison. Finally, the measure eliminates the possibility of early discharge for most parolees.

Increases Prison Sentences for Parole Violators. This measure would increase parole revocation terms in two ways. First, parolees returned to prison by their parole agents and BPH could be returned for a period of up to the remainder of their prison sentence that went unserved due to the earning of work release credits. For example, if an inmate served two years of a four-year sentence, BPH could set a revocation term of as much as two years. Second, those parolees who are returned to prison by the courts upon conviction for a new felony offense would be required to serve both their new sentence as well as the revocation term imposed by BPH. These terms would be served consecutively.

Fiscal Effect

State Prison Operations. Some provisions of this measure will result in additional costs for state prisons while other provisions will result in savings. We discuss these two components and the net fiscal effect below.

The most significant provisions resulting in costs include the following. Provisions to create new sentence enhancements and increase prison terms will result in some offenders serving longer sentences, thereby increasing the state prison population and associated prison operating costs. The new informational program for inmates will have costs for both the operation of the new program, as well as the additional operating costs to house inmates in prison longer because they cannot earn work release credits until completing the program. Finally, the changes made to parole revocation terms will result in many parole violators returning to prison for longer sentences, resulting in increased prison population.

These costs will be partially offset by a couple of other provisions. Specifically, some changes to the Three Strikes law will result in some offenders serving shorter terms in state prison than under current law, as well as potentially allow for the early release of some current third strikers whose current offense is nonserious and nonviolent. In addition, lengthening parole denial periods for lifers will reduce lifer hearing workloads for BPH.

In sum, we estimate that the prison operating costs from this measure will be significantly more than the savings. The net fiscal impact of this measure is unknown, but would likely result in increased net state prison operating costs potentially growing to as much as a few billion dollars annually within a decade. The exact magnitude of these costs is unknown and would depend on a number of factors, including crime rates, local charging and sentencing practices, and offender recidivism rates.

State Prison Construction. The higher prison population resulting from this measure would likely result in one-time capital outlay costs to build new prisons and make renovations to existing facilities. The magnitude of these one-time costs is unknown, but could be as much as several billion dollars. These capital outlay costs would accrue over a number of years as the prison population grows as a result of the changes made by this measure.

State Parole Supervision. Several provisions of this measure would impact the state parole population and associated supervision costs. The longer prison sentences served by inmates under this measure would delay the release of these inmates to parole, decreasing the parole population and thereby reducing parole costs. Conversely, the provisions lengthening parole terms and eliminating the possibility of early discharge from parole would likely increase the parole population. The net impact of these provisions is unknown but is likely to be a savings of as much as several tens of millions of dollars in the short term, but resulting in net costs of a couple hundred million dollars in the long term. The actual fiscal impact that results from this measure would depend on a number of factors, including changes in the length of prison sentences served and the number of parole revocations.

Court-Related Activities and County Jails. Several provisions of this measure could impact costs for courts and jails. The provisions increasing prison sentences for some offenders could result in lower court and jail costs because there would be fewer inmates released to communities and able to commit new crimes for which they would be prosecuted and convicted. Conversely, the provision permitting the resentencing of some third strikers would increase court caseloads and local jails would likely house inmates during the proceedings. The net fiscal impact of this measure on courts and jails is unknown and would depend on a number of factors, particularly local criminal

justice practices. Any fiscal impacts that did result from this measure would be shared between state and local governments.

Other Impacts on State and Local Governments. There could also be other savings to the extent that offenders imprisoned for longer periods because of this measure require less government services, or commit fewer crimes that would result in victim-related government costs. Alternatively, there could be offsetting loss of revenue to the extent that offenders serving longer prison terms would have become taxpaying citizens under current law. The extent and magnitude of these impacts is unknown but potentially significant.

Summary of Fiscal Effect

The measure would have the following fiscal effects:

- Unknown net state costs—for prison operations, parole supervision, and courts—potentially growing to as much as a few billion dollars annually within a decade.
- Unknown one-time state costs over a number of years for capital outlay associated with prison construction, potentially as much as several billions of dollars.
- Unknown fiscal impact to local governments for jail and court-related costs.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance