

December 11, 2006

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

Attention: Ms. Patricia Galvan  
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 2005, we have reviewed the proposed statutory initiative, entitled the “Keep Them In Jail Alternative Incarceration Act (A.G. File No. 06-0037, Amdt. #1-NS).” The measure provides for the operation of alternative jail and treatment facilities for offenders and modifies the workers’ compensation benefits paid to offenders in jails or work release programs.

## **Background**

*County Jails.* Many individuals are booked into county jails upon their arrest for crimes. Many are held there until their criminal cases have been resolved by the courts. Some offenders who have been convicted of misdemeanors or certain felonies—generally, those resulting in a term of incarceration of no more than a year—are sentenced to county jail rather than state prison. State survey data indicate that, as of spring 2006, the population of California’s county jails (including holding areas for persons being booked into jail) averaged about 82,600 persons.

Construction plans for new county detention facilities are subject to state review. Detention facilities are also subject to state regulatory standards for the health and safety of jail inmates.

*Jail Population Limits.* Due to rising jail populations and a lack of sufficient jail space, 20 California counties now must comply with federal court orders limiting the population of their jail facilities. An additional 12 California counties have imposed jail population limits on their own to avoid such litigation. As a result, a significant number of individuals are being released from jails to comply with the population limits. As of spring 2006, an estimated 8,900 individuals were being released each month prior to their scheduled trial for a criminal offense, while about 8,400 offenders who had

received a jail sentence upon their conviction of a crime were released early due to jail space limits.

***Work Release Programs.*** Some sentenced county jail inmates perform kitchen work and other duties while they are incarcerated. However, state law also authorizes county sheriffs to operate voluntary work release programs. Under these programs, a person who has been committed to jail may be released from incarceration if he or she performs manual labor or other types of work that benefits the public, such as park maintenance, graffiti cleanup, picking up trash, or repair of senior centers. An offender who successfully participates in a work release program can reduce the time he or she would otherwise serve in jail. State law does not require that participants receive wages. However, state law does require that participants receive workers' compensation insurance coverage, a statewide program to assist persons with work-related injuries that we discuss below.

***Workers' Compensation System.*** The State Constitution and implementing statutes establish a workers' compensation insurance system that compensates public and private workers for work-related injuries. Under this system, employers—including the state and local governments—must purchase workers' compensation insurance or self-insure to pay these benefits. The amount of compensation that a worker receives under a workers' compensation claim is set in state law and depends upon an individual's physical condition, such as whether he or she is temporarily or permanently disabled.

The amount of a workers' compensation award also depends on the wages the worker received before his or her injury. In general, under state law, a person determined to have a work-related temporary disability is eligible to receive workers' compensation benefits equal to two-thirds of their prior wages for as long as two years. However, a minimum amount of benefits is currently required, even if the worker's wages were so low that they would otherwise receive a lower benefit. This minimum payment for temporary disability currently is \$126 per week. (This amount will increase for injuries that occur after December 2006.) In addition to this compensation, an individual with a work-related injury may also receive medical services.

## **Proposal**

This measure would: (1) allow the operation by sheriffs of alternative jail and treatment facilities for offenders, and (2) modify the workers' compensation benefits that are paid to offenders in jail or work release programs.

***Temporary Jail and Treatment Facilities.*** This initiative would authorize a sheriff in a county that has jail overcrowding problems (as defined by the measure, including counties that are releasing inmates early as a result of federal court orders) to operate housing facilities that meet local health and safety codes for residential occupancy, and

that are deemed secure, as temporary jails or treatment facilities. The measure states that no inmate would be housed in such a facility for more than 90 days while serving a jail sentence. Also, it provides that a decision by a sheriff to place an inmate in such a facility could not be the basis for a claim of damages.

***Workers' Compensation for Jail Inmates and Work Release Program Participants.***

This measure would change state law to reduce or eliminate certain workers' compensation benefits paid to offenders in jails or work release programs who (1) sustain work-related injuries, and (2) are determined to be eligible for temporary disability benefits.

Specifically, this initiative states that the benefits awarded to such a person for a temporary disability must be *the lesser of* the minimum amount provided under current law *or* the amount of the actual weekly wage that was lost because of the disability. For example, under this proposed change in law, a work release participant who is not being paid a wage and who is temporarily disabled by a work-related incident would receive no temporary disability compensation payments.

This measure does not change other types of workers' compensation benefits paid to eligible inmates, work release participants, or their survivors—specifically, those related to permanently disabling injuries or fatalities. In addition, workers' compensation medical benefits would not be changed under this proposal for eligible workers, including those with a temporary disability.

**Fiscal Effects**

***County Detention Facilities.*** If this measure resulted in the addition of temporary county jail and treatment facilities, counties would increase their expenditures for their construction, renovation, and operation of these facilities. Because this measure does not require any county to undertake such efforts, the fiscal effect of this aspect of the initiative, if any, is unknown.

***Workers' Compensation Provisions.*** The provisions of this measure affecting workers' compensation benefits for offenders participating in work release programs could result in county savings in two main ways.

First, this measure could reduce county costs for providing workers' compensation benefits for jail inmates and participants in work release programs. The extent of these savings would depend in part on how the courts and state Division of Workers' Compensation interprets this measure, but would probably be minor.

Second, it is possible that this reduction in workers' compensation benefits could encourage some counties to establish or expand work release programs. To the extent

that expansion of these programs reduced the population of county jails, counties could experience a reduction in their jail operating costs. However, these savings would not be realized in cases where the jail beds that were “freed up” through work release programs were subsequently used to incarcerate additional offenders who would otherwise be released due to a limit on that county’s jail population.

**Summary**

This measure could have the following direct fiscal effects:

- An unknown potential increase in county expenditures for the construction, renovation, and operation of temporary jails and treatment facilities.
- A minor reduction in county costs for certain workers’ compensation benefits for jail inmates and participants in work release programs.
- Unknown potential county savings if changes in workers’ compensation rules resulted in the expansion of work release programs and reduced county jail populations.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance