

September 11, 2007

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Toni Melton
Initiative Secretary

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the “California Prison Population Reduction Act of 2008” (File No. 07-0039).

Current Law

Worktime Credits. Current law allows most state inmates to earn worktime credits, which provide time off of the inmate’s sentence for good behavior and participation in work, education, or other programs. Most inmates are eligible for a maximum of one day off of their prison sentence for each day they participate in a program, generally referred to as “day-for-day” credits. Other inmates, such as those who have been convicted of a violent offense, are eligible to earn worktime credits at a lower rate.

Parole of Inmates Serving Life Sentences. Most inmates in California prisons are sentenced to specified or determinate terms (for example, a sentence of six years). These inmates are automatically released from prison at the conclusion of their sentence, minus the worktime credits they have earned. Other inmates are sentenced to indeterminate terms, such as “ten years to life.” An inmate sentenced to an indeterminate term must serve the minimum amount of time prescribed by their sentence—in this case, ten years—and cannot be released from prison unless approved by the Board of Parole Hearings (BPH) following a hearing to assess the suitability of that inmate to be released to the community.

“Three Strikes” Law. In 1994, California legislators and voters approved increased penalties for certain repeat offenders. The law was enacted as Chapter 12, Statutes of 1994 (AB 971, Jones), and by the electorate in Proposition 184 and is commonly known as “Three Strikes and You’re Out.” The law imposed longer prison sentences for certain repeat offenders, as well as instituted other changes. Most significantly, it required that a person who is convicted of a felony and who has been previously convicted of one or

more violent or serious felonies receive a sentence enhancement. The most significant provisions of the Three Strikes law are as follows:

- If a 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 sentenced by the courts under this provision are often referred to as “second strikers.”
- If a 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 a minimum term of 25 years. Offenders convicted under this provision are frequently referred to as “third strikers.”

As of June 30, 2007, there were about 41,000 inmates in state prison who were sentenced as second or third strikers under the Three Strikes law.

Proposal

This measure contains various provisions that affect the amount of time certain offenders serve in state prison. We discuss the most significant of these provisions below.

Increased Worktime Credits. This initiative would increase worktime credits from current levels to allow all eligible inmates to receive two days off their prison sentences for each day in a program, commonly referred to as “two-for-one” credits.

Maximum Prison Time Established for Inmates With Life Sentences. This measure would change the amount of time many inmates currently sentenced to life terms would serve in state prison. Specifically, the measure establishes maximum periods of confinement as well as sets new minimum sentences. In many cases, the new prison terms would result in shorter prison stays than under current law. For example, an offender convicted of first-degree murder who is currently serving a sentence of 25 years to life would now serve a term of 12 to 20 years in prison.

The BPH would still be responsible for determining when, within these new time frames, inmates would be released from prison. The measure also identifies criteria BPH would have to consider when determining when an inmate is to be released. These criteria include consideration of the offender’s mental health, criminal history, and behavior in prison. The measure also makes other procedural changes for parole determination hearings for these inmates.

Repeal of Three Strikes Law. This measure would eliminate the increased sentences currently required under the Three Strikes law, thereby reducing the amount of time certain repeat offenders would serve in state prison. The measure also allows for resentencing of inmates currently in prison under the Three Strikes law, potentially resulting in their release to parole at an earlier date.

Fiscal Effect

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

State Prison System. This measure makes several changes which would result in reduced state prison operating costs potentially ranging from a few hundred millions of dollars in the first couple of years, growing to the low billions of dollars annually in the longer term. Also, the lower prison population resulting from this measure would potentially result in capital outlay savings associated with prison construction and renovations that would otherwise be needed. The magnitude of these one-time savings is unknown, but could be as much as several billion dollars in the long term. The amount of operating and capital outlay savings would depend on a number of factors, including the growth in the inmate population and amount of prison construction that would occur if this measure were not enacted.

The provisions resulting in these savings include the following. First, the requirement that inmates receive two-for-one worktime credits would result in shorter prison stays for inmates who are eligible for the enhanced credit level. Second, the provisions changing sentencing laws for inmates currently serving life terms would likely result in many such inmates being released from prison sooner than they would be under current law. Third, the provisions of the measure eliminating Three Strikes enhancements would result in shorter prison sentences for inmates who would otherwise be eligible for Three Strikes enhancements under current law. Fourth, the provision allowing the resentencing of inmates currently serving enhanced sentences under the Three Strikes law would result in many of those offenders being released to the community sooner or resentenced to shorter prison terms. Each of these provisions would result in a reduction in the inmate population and, therefore, lower prison operating and capital outlay costs.

State Parole Supervision. Due to the shorter sentences served by some inmates, this measure would accelerate the release of state prisoners to parole, thereby adding to the parole caseload. The resulting increase in parole costs is unknown, but would likely be several tens of millions of dollars initially, growing to the low hundreds of millions of dollars annually when the full impact of the measure is realized. The actual costs would depend on when certain offenders affected by this measure would be released to parole, the number of certain other offenders released from prison without having to serve parole, as well as the number of parolees who returned to prison as a result of committing new offenses in the community.

Court-Related Activities and County Jails. This measure would result in additional state and local costs for the courts and county jails. Two factors primarily account for the increased costs. The first factor is the resentencing provision of this measure, which would increase court caseloads and increase county jail costs because jails would house inmates during the resentencing proceedings. Second, it is likely that some offenders released from

prison because of this measure will be subsequently prosecuted and convicted for new crimes. Taking both factors into account, we estimate these additional costs could potentially be in the low hundreds of millions of dollars annually when the full impact of the measure is realized. These costs would be shared between state and local governments.

Other Impacts on State and Local Governments. This measure could result in other state and local government costs. This would occur to the extent that offenders released from prison because of this measure require government services or commit additional crimes that result in victim-related government costs, such as government-paid health care for persons without private insurance coverage. Alternatively, there could be offsetting state and local government revenue to the extent that offenders released from prisons because of this measure become taxpaying citizens. The extent and magnitude of these impacts are unknown.

Summary of Fiscal Effect

The measure would have the following fiscal effects:

- Net state operating savings of potentially a few hundred million dollars initially, increasing to the low billions of dollars annually, primarily due to reduced prison operating costs.
- Unknown one-time state savings for capital outlay associated with prison construction that would otherwise be needed, potentially as much as several billions of dollars in the long term.
- Increased county costs potentially in the low hundreds of millions of dollars annually for jail and court-related costs.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance