

November 29, 2007

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

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as "The Three Strikes Reform Act of 2008" (A.G. File No. 07-0075).

Current Law

Proposition 184 (commonly referred to as the "Three Strikes and You're Out" law) was adopted by voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, the 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 sentenced by the courts under this provision are often referred to as "second strikers." As of September 2007, about 34,000 inmates were 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 to life. Offenders convicted under this provision are frequently referred to as "third strikers." As of September 2007, about 8,000 inmates were third strikers.

Proposal

The proposed initiative reduces prison sentences served under the Three Strikes law by second and third strikers whose current offenses are specified nonserious and non-

violent felonies. The initiative also allows resentencing of third strikers who are currently serving life sentences for specified nonserious, nonviolent felonies. Both of these changes are described below.

Shorter Sentences for Some New Second and Third Strikers. The measure requires that, with specified exceptions, an offender who has *one prior* serious or violent felony conviction, and whose *new* offense is classified as a nonserious and nonviolent felony, will no longer receive an increased sentence of twice the usual term as is required under current law. For example, a second striker with a prior conviction of first-degree burglary, who was subsequently convicted of grand theft, might receive a sentence of four years under the current law—twice the term of two years that person would otherwise have received for the new crime. Under this measure, the individual would instead be sentenced to two years in prison.

The measure further requires that, with specified exceptions, an offender who has *two or more prior* serious or violent felony convictions and whose *new* offense is classified as a nonserious and nonviolent felony shall receive a prison sentence that is twice the usual term for the new offense, rather than 25-years to life as required under current law. For example, a third striker who was subsequently convicted of grand theft might receive a sentence of four years—twice the regular two-year term—rather than a life term.

The measure limits eligibility for these shorter sentences to offenders who have not committed specified new or prior offenses, including murder as well as certain sex, gun, and drug felonies.

Resentencing of Current Third Strikers. This measure allows third strikers currently serving life terms because of a conviction for a new nonserious and nonviolent felony to apply to be resentenced to twice the usual term for that offense. These offenders must file a request with the court for resentencing within three years of when this measure takes effect. The resentencing requirement would result in reduced prison sentences for some inmates and release from prison for others, including some who would be released without having to serve a parole term. The measure bars some third strikers with specified current and prior crimes—such as murder as well as certain sex, gun, and drug felonies—from being eligible for resentencing. These ineligible offenders would thus serve out their prison terms as they were originally sentenced.

Fiscal Effect

This measure would have significant fiscal effects on both state and local 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 tens of millions of dollars annually in the first couple years, growing to several hundreds of millions of dollars annually within a decade. The lower prison population resulting from this measure would also result in capital outlay savings associated with prison construction and renovations that would otherwise be needed. The magnitude of these one-time capital outlay savings is unknown, but could be as much as a billion dollars in the long term. The amount of savings on prison operations and capital outlay would depend on a number of factors, including the growth in the inmate population and amount of prison construction that would otherwise occur in the absence of the measure.

Several factors result in these savings. Fewer inmates will be incarcerated for life sentences because of the measure's provision requiring that such sentences be applied only to third strikers whose current offense is serious or violent or who have a specified current or prior felony which disqualifies them from a shorter sentence. Fewer inmates will be sentenced to longer terms as second strikers because of the measure's provision requiring that the current offense for second strikers be a serious or violent felony or that the offender has a specified current or prior felony which disqualifies them from a shorter sentence. In addition, the provision allowing the resentencing of some third strikers would result in some offenders being released to the community or resentenced to shorter prison terms, thereby resulting in a reduction in the inmate population.

State Parole Supervision. Because some inmates would receive shorter sentences under this measure, it would accelerate their release to parole, thereby adding to the parole caseload. The parole costs associated with this increase in caseload are unknown, but are potentially up to several tens of millions of dollars annually in the first few years, decreasing to a couple million dollars annually when the full impact of the measure is realized. The actual costs would depend upon the extent to which offenders received shorter sentences, the number of offenders found to be eligible for release from prison without having to serve parole, as well as the number of parolees who subsequently were returned to prison as a result of committing new offenses.

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. First, the resentencing provision would result in a one-time increase in court caseloads, and local jails would likely house inmates during the proceedings. Second, it is likely that there will be ongoing costs because some offenders released from prison because of this measure will be subsequently prosecuted and convicted for new crimes. We estimate these additional costs could potentially be as much as a few tens of millions of dollars annually. 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 magnitude of these impacts is unknown.

Summary of Fiscal Effect

This measure would have the following fiscal effects:

- Net state savings—primarily to prison operations—potentially in the tens of millions of dollars annually initially, increasing to several hundreds of millions of dollars annually within a decade.
- Unknown state savings on a one-time basis for capital outlay associated with prison construction that would otherwise be needed, potentially as much as one billion dollars in the long term.
- Increased state and county costs of potentially a few tens of millions of dollars annually for jail and court-related costs.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance