

December 17, 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 "Safe Neighborhoods Act: Protect Victims, Stop Gangs and Street Crime" (A.G. File No. 07-0076, Amendment #1-S).

Current Law

Types of Crime. There are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. About 18 percent of persons convicted of a felony are sent to state prison. Other felons are supervised on probation in the community, sentenced to county jail, pay a fine, or have some combination of these punishments.

Criminal Justice Programs and Funds. The state provides funding for various state and local criminal justice programs. This includes the following:

- *State Penalty Fund.* The state administers the State Penalty Fund which collects revenues from fees assessed to some criminal offenders. These funds are disbursed for various purposes, including restitution and peace officer training. Also, a portion is transferred to the state General Fund.
- *Youthful Offender Block Grant.* The state has established a block grant program which provides counties with funding to house, supervise, and provide various types of treatment services to juvenile offenders. The amount of funding provided for this program in the 2007-08 budget plan is \$24 million which is projected to increase to \$93 million by 2009-10 in accordance with a formula established in statute.
- *Various Local Crime Prevention and Enforcement Grants.* The state currently provides funding for various local criminal justice programs. For example,

the state provides \$119 million to local law enforcement agencies through the Citizens' Option for Public Safety and an equal amount to local youth services agencies through the Juvenile Justice Crime Prevention Act.

Supervision and Revocation of Parolees. All offenders convicted of a felony and sent to state prison are supervised on parole by the state after their release. If a parolee violates the conditions of his parole supervision, he can be returned to prison by the Board of Parole Hearings (BPH) for up to one year. State policies guide BPH in determining the length of a parolee's revocation term.

Jessica's Law. Proposition 83 (commonly referred to as "Jessica's Law") was approved by voters in November 2006. Among other changes relating to sex offenders, the proposition requires that anyone who has been (1) convicted of a felony or an attempt to commit a felony that (2) requires him to register as a sex offender and (3) been sent to prison shall be monitored by a Global Positioning System (GPS) device while on parole and for the remainder of his life. The proposition did not specify, however, whether state or local governments would be responsible for paying for the GPS supervision costs after these offenders are discharged from state parole supervision.

Lifer Parole Hearings. Some inmates are sentenced to life terms in prison with the possibility of release to parole. After serving a minimum term, BPH holds a hearing to determine whether these "lifers" can safely be released from prison. If BPH denies release, the offender is eligible for another hearing within one to five years, as specified in state law.

Proposal

This measure makes several changes to current laws relating to criminal offenders. The most significant of these changes are described below.

New Criminal Justice Programs and Funding Levels. The proposal creates new state-funded criminal justice programs and requires that funding for certain existing programs be continued at current levels or increased in the future. In total, the measure requires the state to provide \$952 million for specified criminal justice programs beginning in 2009-10. This amount reflects an increase in funding of \$352 million compared to the amount provided in the *2007-08 Budget Act*. In particular, the measure increases state funding for police, sheriffs, district attorneys, jails, and probation offices primarily for law enforcement activities. The measure prohibits the state or local governments from using the new funding provided to replace funds now used for the same purposes. In addition, the measure requires that future funding for some of these new and existing programs be adjusted annually for inflation.

Specifically, the measure would allocate funding for such purposes as:

- Monetary awards to obtain information on crimes;
- The construction and operation of county jails;
- Juvenile facility repair and renovation and the operation of probation supervision and recreational programs for youth;
- Centers to assist investigations into child abuse and to assist victims recovering from crimes;
- Contracts to assist parolees in their reentry into communities;
- Task forces that would target offenders involved in gang activity, focus on narcotics interdiction at the state border, or to search high-risk probationers for guns;
- Running criminal background checks on individuals receiving federal Section 8 housing assistance vouchers; and
- Electronic devices to track violent offenders or those involved in gangs and sex crimes.

Figure 1 summarizes the increase in funding required by this measure, generally beginning in 2009-10.

Figure 1			
Annual General Fund State Funding for Criminal Justice Programs Affected by This Measure			
<i>(In Millions)</i>			
	Current Spending Level	Proposed Spending Level	Change
Local law enforcement ^a	\$187	\$406	\$219
New state programs	—	68	68
Local juvenile programs	413 ^b	479	66
Totals	\$600	\$952	\$352
^a Local law enforcement includes funding directed to police, sheriffs, district attorneys, adult probation, and jails. ^b Includes \$93 million for the youthful offender block grant as authorized by current law for 2009-10. Detail may not total due to rounding.			

In addition, this measure redistributes the State Penalty Fund in a way that increases support for training for peace officers, corrections staff, prosecutors, and public defenders, as well as various victims' services programs, while eliminating the existing transfer of money to the state General Fund and the Department of Education. The measure

also requires that Youthful Offender Block Grant funds be distributed to county probation offices and prohibits them from being provided directly to county drug treatment, mental health, or other county departments.

This measure creates a new state office to distribute public service announcements about criminal justice statutes, such as the “Three Strikes and You’re Out” law, and establishes a commission to evaluate publicly funded early intervention and rehabilitation programs designed to reduce crime.

Increased Criminal Penalties for Some Crimes. The measure increases criminal penalties for various crimes, including crimes related to gang participation and recruitment, intimidation of individuals involved in court proceedings, possession and sale of methamphetamines, vehicle theft, and firearms possession. For example, this measure requires that offenders convicted of car theft would be subject to an additional year in state prison if the theft was for the purpose of selling the stolen car. These and other proposed increases in penalties will likely result in *more offenders* being sentenced to state prison or jail for the crimes specified in the measure *for a longer period of time*. This measure also allows law enforcement authorities to impound vehicles for up to 60 days when a gun used in a crime is found in one.

Various Changes to State Parole Policies. The measure makes several changes to state parole policies. For example, the measure reduces the average parolee caseload of parole agents. The measure also requires the state to pay the cost of GPS monitoring of sex offenders after their discharge from parole supervision. It also permits longer periods between lifer parole hearings following a denial of parole to as long as 15 years for some offenders.

Other Changes. The measure makes several other changes to state laws affecting the criminal justice system, including the establishment of a statewide gang registry, changes to hearsay rules and gang injunction procedures, the use of temporary jails, and release of undocumented persons arrested for violent or gang-related crimes. Each of these provisions is described in more detail below.

- ***Gang Databases.*** The measure requires the development of two databases related to gang information for the use of law enforcement agencies. The first requires Department of Justice (DOJ) to create a secure registry accessible to local law enforcement that lists individuals who have been convicted of being gang members. In addition, the measure calls for what it terms a statewide electronic data warehouse to facilitate the sharing of information about gangs and gang members among state, local, and federal law enforcement officials. The DOJ and other law enforcement agencies currently operate an electronic

data system called Cal-Gang. The measure requires the new statewide data warehouse to interface with Cal-Gang.

- **Hearsay Evidence.** A legal statement is considered hearsay evidence when an attorney cannot cross-examine the witness making the statement. The measure would expand the circumstances in which hearsay evidence is admissible in court, especially in cases where someone has intimidated or otherwise tampered with a witness.
- **Gang Injunction Procedures.** This measure changes legal procedures to make it easier for local law enforcement agencies to bring lawsuits against members of street gangs to prevent them from engaging in criminal activities and makes it a new and separate crime punishable by fines, prison, or jail to violate such injunctions.
- **Temporary Housing for Offenders.** The measure permits counties with overcrowded jails to operate temporary jail and treatment facilities to house offenders. These temporary facilities would be required to meet local health and safety codes that apply to residences.
- **Undocumented Offenders.** This measure prohibits persons charged with a violent or gang-related felony from being released on bail or their own recognizance pending trial if he or she is illegally in the United States. Sheriffs would be required to record in their official criminal history the immigration status of anyone charged, booked, or convicted of a felony.

Fiscal Effect

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

State Funding for Criminal Justice Programs. The measure increases state funding for various state and local criminal justice programs by about \$352 million in 2009-10. We estimate that this amount will increase by about \$100 million annually within a decade due to the measure's provisions that require the state funding for some of these programs be adjusted each year for inflation. In addition, the provisions requiring the state to implement new gang databases would likely result in unknown one-time implementation costs, as well as potentially some ongoing costs to maintain these databases. The measure allocates \$2 million annually of the \$352 million for the statewide electronic gang data warehouse. In addition, the redistribution of the State Penalty Fund could result in about a \$13 million loss in state General Fund revenues.

State Prison and Parole System. Various provisions of this measure would result in additional state costs to operate the prison and parole system. These costs are likely to be at least a couple hundreds of millions of dollars annually. These increased costs are

mainly due to provisions that increase penalties for various crimes, decrease parole agent caseloads, and require the state to pay for the cost of GPS monitoring for sex offenders discharged from parole supervision. These provisions could also result in additional one-time capital outlay costs, primarily related to prison construction and renovation. The magnitude of these costs is unknown but potentially could exceed a half billion dollars.

Other provisions of this measure could affect the state costs for operating the prison and parole system. The additional funding provided for local law enforcement activities could result in additional offenders being arrested, prosecuted, and sent to prison. However, the measure provides some additional funding for prevention and intervention programs for offenders designed to reduce the likelihood that individuals will commit new crimes. To the degree that these programs are successful, they could result in fewer offenders being sent to state prison than would otherwise occur. The magnitude of these offsetting effects is unknown but could be significant.

State Trial Courts, County Jails, and Other Local Criminal Justice Agencies. This measure could have significant fiscal effects on state trial courts, county jails, and other local criminal justice agencies, potentially resulting in both new costs and savings. The net fiscal effect of its various provisions is unknown.

On the one hand, the measure could result in increased costs to the extent that the additional funding provided for local law enforcement activities results in more offenders being arrested, prosecuted, and incarcerated in local jails. There could also be additional jail costs for holding undocumented offenders arrested for violent or gang-related crimes who would no longer be eligible for bail or be released on their own recognizance. The measure's provision permitting the use of temporary jail and treatment facilities would allow counties the authority to convert noncorrectional facilities to temporary jails. There could be additional costs to counties to renovate and operate such temporary facilities. The magnitude of these costs would depend primarily on the number and size of new temporary facilities utilized by counties.

On the other hand, the measure provides some additional funding for prevention and intervention programs designed to reduce the likelihood that individuals will commit new crimes. To the degree that these programs are successful, they could result in fewer offenders being arrested, prosecuted, and incarcerated in local jails than otherwise would. Additionally, the measure's provisions increasing criminal penalties for specified crimes could result in more offenders being sentenced to state prison who would otherwise be incarcerated in local jails, thereby reducing local jail operations costs.

Other Impacts on State and Local Governments. Other savings to the state and local government agencies could result to the extent that offenders imprisoned for longer periods under the measure's provisions require fewer government services, or commit fewer crimes that result in victim-related government costs. Alternatively, there could be an offsetting loss of revenue to the extent that offenders serving longer prison terms would no longer become taxpaying citizens under current law. The extent and magnitude of these impacts are unknown.

Summary of Fiscal Effects

This measure would have the following fiscal effects:

- Net state costs likely to exceed a half billion dollars annually primarily for increased funding of criminal justice programs, as well as for increased costs for prison and parole operations.
- Unknown one-time state capital outlay costs potentially exceeding a half billion dollars for prison facilities.
- Unknown net fiscal impact for state trial courts, county jails, and other local criminal justice agencies.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance