

November 30, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to felony sentencing (A.G. File No. 11-0057).

Background

Three Strikes. 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 2011, about 32,000 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 2011, about 9,000 inmates were third strikers.

Post-Release Supervision. Under indeterminate sentencing, convicted felons (such as third strikers), receive a sentence range, such as 25-years-to-life, and typically appear before a parole board in order to be granted release from prison. Under determinate sentencing, convicted felons (such as second strikers) receive fixed prison terms and do not appear before a parole board in order to be released from prison. Under existing state law, serious and violent offenders, as well as some other offenders (including third strikers), released from state prison are placed on state parole. On the other hand, individuals released from prison whose current offense was nonserious and non-violent are supervised in the community by counties, primarily by probation departments.

Proposal

This measure reduces prison sentences served under the Three Strikes law by certain third strikers whose current offenses are specified nonserious and non-violent felonies. The measure also allows resentencing of certain third strikers who are currently serving life sentences for specified nonserious, non-violent felonies. Both of these changes are described below.

Shorter Sentences for Some Third Strikers. The measure 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 non-violent 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 is convicted of a crime in which the usual sentence is two to four years would instead receive a sentence of between four to eight years—twice the term that would otherwise apply—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 and certain sex, gun, and drug felonies.

Resentencing of Some Current Third Strikers. This measure allows, with specified exceptions, third strikers currently serving life terms because of a conviction for a new nonserious and non-violent felony to apply to be resentenced to twice the usual term for that offense. The measure states, however, that courts are not required to resentence inmates that would pose an unreasonable risk to public safety. Moreover, the measure bars some third strikers with specified current and prior crimes (such as murder and 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 Effects

This measure would have a number of fiscal effects on the state and local governments. The major fiscal effects are discussed below.

State Prison System. This measure makes several changes that would result in a reduced prison population. First, 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. 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.

Collectively, the above changes would result in state prison savings, potentially ranging up to the high tens of millions of dollars annually in the short run, possibly growing in excess of \$100 million annually in the long run. The amount of state prison savings would primarily depend on the actual changes in the inmate population resulting from this measure.

County Community Supervision and State Parole Supervision. Third strikers who are resentenced under this measure would become eligible for county community supervision upon their release from prison, rather than state parole. In addition, future offenders entering the prison system who would have otherwise been sentenced as third strikers in the absence of this measure

would also be placed on county community supervision upon their release from prison. Together, these changes would increase the caseload of offenders supervised by counties in the community. However, because some of the resentenced offenders may have served a sufficient amount of time in prison, some of them could be released from prison without community supervision. We estimate that the costs to counties resulting from the above changes could be several million dollars annually in the first few years, but would be minor in subsequent years once the resentenced offenders are discharged from community supervision. The amount of these costs would primarily depend on the actual changes in the inmate population resulting from this measure, and the number of resentenced offenders placed on county community supervision.

At the same time, the measure would result in state savings around the low millions of dollars annually in the long run, due to a future reduction in the number of third strikers supervised by state parole agents and in the number of state parole hearings. The actual amount of savings would depend upon both changes in the third striker population and the rate at which the parole board would have released third strikers in the absence of this measure.

State Courts and County Jails. In the near term, this measure would result in increased state and local costs for the courts and county jails. First, the resentencing provision would result in a one-time increase in court caseloads, and county jails would likely house inmates during resentencing proceedings. District attorneys, public defenders, and county sheriffs could also potentially experience increased workload related to these proceedings. Second, it is likely that there would be ongoing costs because some offenders released from prison because of this measure would subsequently have court hearings for violating the terms of their community supervision or be convicted of new crimes. We estimate that these additional costs could be in the millions to low tens of millions of dollars in the first few years, but would be minor in subsequent years once the resentencing hearings are completed and the resentenced offenders are discharged from community supervision. The actual impact would depend on the number of resentencing hearings that occur, the number of third strikers resentenced, and the number of resentenced offenders placed on county community supervision.

Other Fiscal Impacts. 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 Effects

This measure would have the following major fiscal effects:

- State savings related to prison and parole operations that potentially range in the high tens of millions of dollars annually in the short run, possibly exceeding \$100 million annually in the long run.

- Increased state and county costs in the millions to low tens of millions of dollars annually in the first few years, likely declining substantially in future years, for state court activities and county jail, community supervision, and court-related activities.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance