



February 11, 2016

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

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional and statutory initiative related to parole consideration, credits, and the prosecution of juveniles in adult court (A.G. File No. 15-0121, Amendment No. 1).

## **BACKGROUND**

### **Parole Consideration and Credits for Prison Inmates**

*Parole Consideration Hearings.* Under indeterminate sentencing, prison inmates receive a sentence range, such as 25-years-to-life, and typically appear before the state Board of Parole Hearings (BPH) for a parole consideration hearing in order to be granted release from prison. Most inmates, however, receive determinate sentences. Under determinate sentencing, inmates receive fixed prison terms and do not need a parole consideration hearing to be released from prison. However, in certain circumstances, inmates serving determinate sentences are eligible for parole consideration hearings before they have served their entire sentence. For example, under current law, inmates who committed their crime before the age of 23 and receive a determinate sentence are eligible for parole consideration hearings after serving 15 years of their sentences. In addition, pursuant to a federal court order, there are other determinately sentenced inmates that receive parole consideration partway through their terms. This was one of several measures put in place to keep the prison population below a limit put in place by the court.

*Credits.* State law currently provides the California Department of Corrections and Rehabilitation (CDCR) with the authority to award credits to prison inmates that reduce the time that they must serve. The credits are provided for good behavior, or for participating in work, training, or education programs. Inmates can reduce their sentence by as much as one-half through these credits. However, state law restricts the amount of credits that certain inmates can earn. For example, the most inmates convicted of using a firearm while committing certain crimes can reduce their sentences with credits is 15 percent.

## Juvenile Justice

***Youths in Juvenile Delinquency Court.*** Individuals accused of committing crimes when they were under 18 years of age are generally tried in juvenile delinquency court rather than in adult criminal court. Juvenile court proceedings differ from adult court proceedings in various ways. For example, rather than sentencing a youth to a set term of incarceration, juvenile court judges determine the appropriate placement and treatment for the youth, based on such factors as the youth's offense, prior record, and criminal sophistication.

Counties are generally responsible for the youths placed by juvenile courts. These youth are typically allowed to remain with their families. However, some are placed outside of their home, such as in county-run camps or ranches. In addition, if the judge finds that the youth committed certain major crimes specified in statute (such as murder, robbery, and certain sex offenses), the judge can place the youth in a facility operated by the state Division of Juvenile Justice (DJJ). State law requires that counties pay a portion of the cost of housing such youths committed to DJJ by juvenile courts. Youths who are released from DJJ are generally supervised in the community by county probation officers. In total, about 52,000 youths were tried in juvenile delinquency court in 2014.

***Youths in Adult Court.*** In certain circumstances, individuals accused of committing crimes when they were age 14 or older can be tried in adult criminal court and subject to adult sentences. (Youths accused of committing crimes before they were age 14 must have their cases heard in juvenile court.) Such cases can generally end up in adult criminal court in one of the three following ways:

- ***Fitness Hearing.*** A prosecutor can request a fitness hearing in which a juvenile court judge decides whether a youth should be transferred to adult court. For youths accused of committing crimes when they were age 14 or 15, the crime must be one of certain major crimes specified in statute (such as murder, robbery, or certain sex offenses). For youths accused of committing a crime when they were age 16 or 17, the prosecutor can seek this hearing for any crime, but typically will only do so for more serious crimes or for youths with a significant criminal history.
- ***Direct Filing.*** If a youth has a significant criminal history and/or is accused of certain crimes specified in statute (such as murder), a prosecutor can "direct file" charges in adult criminal court without needing to seek a fitness hearing. There are more circumstances for which youths accused of committing crimes when they were age 16 or 17 can be subject to direct filings.
- ***Mandatory Filing.*** If a youth is accused of committing murder or certain sex offenses with specified aggravating special circumstances (such as also being accused of torturing the victim), he or she must be tried in adult court.

Relatively few youths are tried in adult criminal court each year. For example, only about 400 youths were tried in adult criminal court in 2014.

Youths who are convicted in adult criminal court when they are under 18 years of age are typically held in DJJ for the first portion of their sentences. When these youth turn age 18, they are generally transferred to state prison. However, if their sentence is short enough that they are able to complete their terms before turning age 21, they serve their entire sentences in DJJ. The state is solely responsible for the cost of housing youths in DJJ who were convicted in adult criminal court.

After completing their sentences, youth convicted in adult court are generally supervised in the community by state parole agents whether they are released from DJJ or state prison.

## PROPOSAL

This measure makes changes to the State Constitution to increase the number of inmates eligible for parole consideration and provide CDCR with additional authority to award credits to inmates. The measure also makes statutory changes to require that youths have a hearing in juvenile delinquency court before they can be transferred to adult criminal court. We describe these provisions in greater detail below.

***Parole Consideration for Non-Violent Offenders.*** The measure amends the State Constitution to specify that any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense. The measure defines primary offense as the longest term imposed excluding any additional terms that are added to an offender's sentence. Such additional terms include: (1) the sentences for the lesser crimes the inmate is convicted of in certain cases where the inmate is convicted of multiple crimes and (2) sentencing enhancements (such as the additional time an inmate must serve for using a firearm while committing a crime). As a result, these offenders could be released on an expedited basis, after serving the term for their primary offense. In addition, the measure authorizes CDCR to adopt regulations to implement the above changes and requires the Secretary of CDCR to certify that they protect and enhance public safety.

***Authority to Award Credits.*** The measure also amends the State Constitution to specify that CDCR shall have the authority to award credits to inmates for good behavior and approved rehabilitative or educational achievements. As a result, CDCR could authorize credits beyond the current limits. In addition, the measure authorizes CDCR to adopt regulations to implement the above changes and requires the Secretary of CDCR to certify that they protect and enhance public safety.

***Juvenile Transfer Hearings.*** The measure modifies statute regarding fitness hearings to require that all youths have a hearing in juvenile delinquency court before they can be transferred to adult criminal court. As a result, prosecutors would no longer be able to file charges directly in adult criminal court and no youths would have their cases heard in adult criminal court on a mandatory basis. In addition, the measure specifies that hearings to transfer youths to adult criminal court could only be sought for (1) youths accused of committing certain major crimes specified in statute (such as murder, robbery, and certain sex offenses) when they were age 14 or 15 and (2) youths accused of committing a felony when they were 16 years of age or older. As a result, there may be fewer youth tried in adult court. These youth would likely be subject to shorter terms than would be the case if they were subject to adult sentences.

## FISCAL EFFECTS

This measure would have various fiscal effects on the state and local governments. However, the magnitude of these effects would depend on how certain provisions in the measure are interpreted and implemented, such as the extent to which BPH grants parole and CDCR awards additional credits. As such, our estimates below encompass a relatively wide range.

### **Parole Consideration for Non-Violent Offenders**

*Net State Savings.* To the extent that non-violent offenders serve shorter terms in prison due to the parole consideration provisions of the measure, it would reduce state costs as the size of the prison population would decline. However, these savings would be partially offset by a couple of factors. First, BPH would experience costs associated with considering inmates for parole. Second, under current law, indeterminately sentenced offenders and offenders with convictions for serious crimes are supervised by state parole agents following their release from prison. To the extent that this measure expedited the release of these offenders, the above prison savings would be slightly offset by increased parole costs for roughly a decade following the implementation of the measure. In total, we estimate that the net savings to the state from these factors would likely be in the tens of millions of dollars annually on an ongoing basis. We note that in the short term the net savings would likely be higher.

*County Costs.* Under current law, offenders whose current conviction is not violent or serious are supervised in the community by county probation officers following their release from prison. Accordingly, to the extent that this measure expedited the release of these offenders, it would temporarily increase county costs to supervise these individuals in the community. We estimate that these costs could range between the millions and tens of millions of dollars annually for a few years following the initial implementation of the measure.

### **Credits for Prison Inmates**

*Net State Savings.* To the extent that CDCR decides to grant additional credits beyond those currently authorized, the size of the prison population would decline—resulting in a reduction in state correctional costs. Under current law, offenders convicted of serious or violent offenses are supervised by state parole agents following their release from prison. Accordingly, to the extent that the measure expedited the release of these offenders, the above prison savings would be slightly offset by increased parole costs for a period of years following the implementation of the measure. The precise fiscal effect would depend on how much average sentence lengths were reduced by CDCR. For example, if the department only granted a minor increase in credits, the net savings would be minimal. On the other hand, if the department granted sufficient credits to reduce average inmate sentences by a few months, the measure could eventually result in net state savings reaching into the low hundreds of millions of dollars annually.

*County Costs.* To the extent that the measure's changes to credits expedite the release of inmates from state prison who have not been convicted of serious or violent crimes, the measure would temporarily increase county costs to supervise these individuals in the community following their release. We estimate that these costs could range from minor to the tens of millions of dollars annually for a period of years following the implementation of the measure.

### **Prosecution of Youth in Adult Court**

*Net Reduction in State Costs.* If fewer youths are tried and convicted in adult criminal court, the measure would have a number of fiscal effects on the state. First, it would reduce state prison and parole costs as youths affected by the measure would no longer spend any time in prison or be supervised by state parole agents following their release. In addition, because juvenile delinquency court proceedings are generally shorter than adult criminal court proceedings, the measure would reduce state court costs. These savings would be partially offset by increased state juvenile justice

costs as youths affected by the measure would generally spend a greater amount of time in a DJJ facility. However, a portion of the cost of housing these youths in DJJ would be paid for by counties. In total, we estimate that the net savings to the state from the above effects could be around a few million dollars annually.

***Net Increase in County Costs.*** If fewer youths are tried and convicted as adults, the measure would also have a number of fiscal effects on counties. First, as discussed above, counties would be responsible for paying a portion of the costs of housing these youth in DJJ. In addition, county probation departments would be responsible for supervising these youths following their release from DJJ. We also note that because juvenile delinquency proceedings are generally shorter than adult criminal proceedings, the above county costs would be partially offset by some savings in various ways. For example, because youths can be housed in county juvenile halls prior to and during court proceedings, youths affected by the measure would likely spend less time in these facilities. Similarly, county agencies involved in court proceedings for these youths, such as district attorneys and public defenders, would also experience a reduction in workload. In total, we estimate that the net costs to counties due to the above effects could be a few million dollars annually.

### **Summary of Fiscal Effects**

We estimate that this measure would have the following major fiscal effects, which could widely range depending on such factors as the discretion exercised by (1) the Board of Parole Hearings in determining whether to grant inmates parole and (2) the California Department of Corrections and Rehabilitation in determining whether to grant additional credits:

- Net state savings that could range from the tens of millions of dollars to the low hundreds of millions of dollars annually primarily due to a reduction in the prison population from additional paroles granted and credits earned.
- Net county costs that could range from the millions to tens of millions of dollars annually, declining to a few million dollars after initial implementation of the measure.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance