



September 24, 2018

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to felony sentencing (A.G. File No. 18-0008).

Background

Felony Crimes. There are three types of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as violent include murder, robbery, and burglary of an occupied residence. While almost all violent felonies are also considered serious, other felonies—such as selling certain drugs to a minor—are defined only as serious. Felonies that are not classified as violent or serious include battery and sale of drugs to adults.

Responsibilities Realigned From State to Counties. In 2011, responsibility for incarcerating and supervising certain felony offenders was shifted—or “realigned”—from the state to the counties. This was intended to improve offender outcomes and reduce prison overcrowding, as required by a federal court order. Specifically, this realignment affected the following groups of offenders:

- ***Lower-Level Offenders.*** Before the 2011 realignment, any adult convicted of a felony could be sentenced to state prison. Following realignment, offenders with no current or prior convictions for serious, violent, or sex offenses are generally ineligible for state prison. Instead, these offenders serve their sentences under county jurisdiction. This could include serving their entire sentence in county jail or serving a portion of their sentence in jail and a portion in the community under the supervision of a county probation officer (commonly referred to as a “split sentence”). Unlike offenders released from prison—who are supervised in the community for a period of time following their sentences—felons who are sentenced to county jurisdiction are not supervised following their sentences.
- ***Parolees.*** Before realignment, generally all offenders released from state prison were supervised in the community by state parole agents. Following realignment, however, state parole agents generally only supervise those released from prison after serving a sentence for a serious or violent crime. The remaining offenders released from prison are

generally supervised in the community by county probation officers (commonly referred to as Post Release Community Supervision).

- ***Parole Violators.*** Before realignment, individuals released from prison could have their parole revoked for violating the terms of their supervision and be returned to prison. Following realignment, however, all offenders released from prison must generally serve their revocation terms in county jail.

The 2011 realignment significantly impacted both state and county correctional populations. Specifically, it reduced the state correctional population and increased county correctional populations. However, on an average daily population basis the decrease at the state level was greater than the increase at the county level. This is because realigned offenders generally spend less time in the county correctional system under realignment than they would otherwise have in the state correctional system.

Counties Receive Dedicated Revenues for Realigned Responsibilities. To finance these responsibilities shifted to counties in 2011, the state annually allocates a portion of state sales tax revenue directly to counties. The State Constitution guarantees these revenues—or a similar General Fund amount—to counties so long as counties maintain their 2011 realignment responsibilities. Changing the amount of realignment revenue provided to counties likely would require changing the tax rates. In 2018-19, counties are expected to receive a total of over \$1.4 billion to pay for the three realigned felon populations described above. State law places some limits on how counties spend these funds. For example, counties are generally limited from using these funds to offset spending on public safety services.

Proposal

This measure amends state law to reverse the 2011 realignment of lower-level offenders and parolees. Specifically, the measure requires that felony offenders with no current or prior convictions for serious, violent, or sex offenses who are sentenced to a term of incarceration serve their sentences in state prison. Accordingly, such offenders would no longer be sentenced to county jail or a split sentence.

In addition, the measure eventually requires that all offenders who are released from prison be supervised by state parole agents. (Prison inmates with a current serious or violent offense who were sentenced before the implementation of the measure would continue to be released to county community supervision.) As such, no prison inmates would be released to county community supervision in future years. Under the measure, individuals released from prison would continue to serve their revocation terms in county jail if they violate the terms of their community supervision.

We note that the measure does not change the dedicated sales tax revenue that the 2011 realignment provides counties for the three realigned felon populations. As a result, counties would have the same amount of 2011 realignment revenues even though its program responsibilities were now reduced.

Fiscal Effects

This measure would have a number of fiscal effects on the state and local governments. The size of these effects would depend on several factors. In particular, it would depend on decisions made by various entities, such as local prosecutors, judges, California Department of Corrections and

Rehabilitation (CDCR), and the Legislature. For example, CDCR's choice in how to house and supervise the additional inmates and parolees resulting from the measure would affect state costs. The department would have to take action to remain in compliance with the federal court order related to prison overcrowding. In addition, the fiscal effects would depend on whether the state took action to offset the costs the measure creates for it, such as by reducing the realignment revenue counties receive. Accordingly, the fiscal effects described below are subject to significant uncertainty.

State Effects. The measure would increase state prison and parole workload and costs due to the following:

- **Increase in State Prison Population.** By requiring that lower-level felony offenders serve their terms of incarceration in state prison rather than under county jurisdiction, the measure would increase the state prison population. We estimate that the increase in the prison population could be in the low tens of thousands of inmates.
- **Increase in State Parole Population.** The measure would increase the parole population for two reasons. First, offenders who are currently released from prison to county community supervision would instead be released to state parole. Second, because the measure would increase the number of offenders admitted to prison, it would also increase the number released from prison to parole. We estimate that the parole population could increase by several tens of thousands of offenders.

In total, we estimate that the above effects would increase state criminal justice system costs by potentially around a billion dollars annually. Over the long run, the actual costs could be higher or lower depending on the specific steps that the state takes to accommodate the additional prison inmates resulting from the measure, such as building additional prison capacity or reducing the terms inmates serve in prison. In addition, as noted earlier, current law likely prohibits shifting realignment revenues from the counties to the state to pay for these costs without a change in the state sales tax rate. However, the state would likely take action to offset these increased costs by changing the amount of realignment revenue provided to counties and/or shifting other responsibilities to counties to reduce state costs. These actions would likely reduce state responsibilities and increase county responsibilities.

County Effects. The measure would reduce county correctional workload and costs due to the following:

- **Reduction in County Jail Population.** Because the measure would require that lower-level felons sentenced to a term of incarceration go to state prison rather than county jail, the measure would reduce the jail population. This decrease could be partially offset, however, by an increase in the number of offenders serving revocation terms in jail. This is because offenders would generally spend a longer period of time under community supervision than they otherwise would have absent this measure. In total, we estimate that the net decrease in the jail population could exceed a few thousand inmates.
- **Reduction in County Community Supervision Population.** The measure would reduce the population supervised by county probation departments for two reasons. First, offenders would no longer be released from prison to county community

supervision. Second, felony offenders could no longer serve a portion of their split sentence under county community supervision, as all felony offenders sentenced to a term of incarceration would go to prison. We estimate that the total decrease in the county community supervision population could exceed a few tens of thousands of offenders.

In total, we estimate that the above effects would result in a net cost reduction to the counties potentially in the hundreds of millions of dollars annually. As discussed above, while the measure does not change the dedicated sales tax revenue that the 2011 realignment provides counties for the three realigned felon populations, it is likely that the state would take action to either change the amount of realignment revenue counties receive and/or shift other responsibilities to counties. This would likely offset some or all of the above cost reductions.

Other Fiscal Effects. There could be various other fiscal effects on the state and local governments due to the measure. For example, Proposition 47 (2014) reduced penalties for certain property and drug crimes. It also required that the savings that the measure created by diverting people from state prison be spent on truancy (unexcused school absences) prevention, programs intended to reduce crime, and victim services. Because this measure would increase the number of offenders for which the state is responsible, it could have the effect of changing the state savings associated with Proposition 47.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects:

- Increased state criminal justice system costs of around a billion dollars annually, due to an increase in the state prison and parole populations.
- Net reduction in county criminal justice system costs likely in the hundreds of millions of dollars annually that are currently supported by realignment revenues provided by the state, due to a decline in county correctional populations.
- The state would have various options to offset some or all of its increased costs—including changing the amount of realignment revenue counties receive and/or county responsibilities. Such actions would offset some or all of the reductions in county costs.

Sincerely,

Mac Taylor
Legislative Analyst

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Director of Finance