



Proposition 20

RESTRICTS PAROLE FOR CERTAIN OFFENSES CURRENTLY CONSIDERED TO BE NON-VIOLENT. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE.

ANALYSIS OF MEASURE

Overview

Proposition 20 has four major provisions. It:

- Changes state law to increase criminal penalties for some theft-related crimes.
- Changes how people released from state prison are supervised in the community.
- Makes various changes to the process created by Proposition 57 (2016) for considering the release of inmates from prison.
- Requires state and local law enforcement to collect DNA from adults convicted of certain crimes.

Below, we discuss each of these major provisions and describe the fiscal effects of the proposition.

Criminal Penalties for Certain Theft-Related Crimes

Background

A felony is the most severe type of crime. State law defines some felonies as “violent” or “serious,” or both. Examples of felonies defined as violent and serious include murder, robbery, and rape. Felonies that are not defined as violent or serious include human trafficking and selling drugs. A misdemeanor is a less severe crime. Misdemeanors include crimes such as assault and public drunkenness.

Felony Sentencing. People convicted of felonies can be sentenced as follows:

- ***State Prison.*** People whose current or past convictions include serious, violent, or sex crimes can be sentenced to state prison.
- ***County Jail and/or Community Supervision.*** People who have no current or past convictions for serious, violent, or sex crimes are typically sentenced to county jail or are supervised by county probation officers in the community, or both.

Misdemeanor Sentencing. People convicted of misdemeanors can be sentenced to county jail, county community supervision, a fine, or some combination of the three. They are generally punished

less than people convicted of felonies. For example, a misdemeanor sentence cannot exceed one year in jail while a felony sentence can require a much longer time in jail or prison. In addition, people convicted of misdemeanors are usually supervised in the community for fewer years and may not be supervised as closely by probation officers.

Wobbler Sentencing. Currently, some crimes—such as identity theft—can be punished as either a felony or a misdemeanor. These crimes are known as “wobblers.” The decision is generally based on the specifics of the crime and a person’s criminal history.

Proposition 47 Reduced Penalties for Certain Crimes. In November 2014, voters approved Proposition 47, which resulted in certain theft-related crimes being punished as misdemeanors instead of felonies. For example, under Proposition 47, theft involving property worth \$950 or less is generally considered petty theft and punished as a misdemeanor—rather than as a felony as was sometimes possible before (such as if a car was stolen). Proposition 47 also generally requires that shoplifting involving \$950 or less be punished as a misdemeanor—rather than a felony as was possible before.

Proposal

Increases Penalties for Certain Theft-Related Crimes. Proposition 20 creates two new theft-related crimes:

- **Serial Theft.** Any person with two or more past convictions for certain theft-related crimes (such as burglary, forgery, or carjacking) who is found guilty of shoplifting or petty theft involving property worth more than \$250 could be charged with serial theft.
- **Organized Retail Theft.** Any person acting with others who commits petty theft or shoplifting two or more times where the total value of property stolen within 180 days exceeds \$250 could be charged with organized retail theft.

Both of these new crimes would be wobblers, punishable by up to three years in county jail, even if the person has a past conviction for a serious, violent, or sex crime.

In addition, Proposition 20 allows some existing theft-related crimes that are generally punished as misdemeanors under Proposition 47 to be punished as felonies. For example, under current law, theft of all property worth less than \$950 from a store is generally required to be punished as a misdemeanor. Under Proposition 20, people who steal property worth less than \$950 that is not for sale (such as a cash register) from a store could receive felony sentences. This could increase the amount of time people convicted of these crimes serve. For example, rather than serving up to six months in county jail, they could serve up to three years in county jail or state prison.

We estimate that a few thousand people could be affected by the above changes each year. However, this estimate is based on the limited data available, and the actual number of people affected would depend on choices made by prosecutors and judges. As a result, the actual number could be significantly higher or lower.

Community Supervision Practices

Background

People who are released from state prison after serving a sentence for a serious or violent crime are supervised for a period of time in the community by state parole agents. People who are released from prison after serving a sentence for other crimes are usually supervised in the community by

county probation officers—commonly referred to as Post-Release Community Supervision (PRCS). When people on state parole or PRCS break the rules that they are required to follow while supervised—referred to as breaking the “terms of their supervision”—state parole agents or county probation officers can choose to ask a judge to change the terms of their supervision. This can result in harsher terms or placement in county jail.

Proposal

Changes Community Supervision Practices. This proposition makes various changes to state parole and PRCS practices. For example, it requires probation officers to ask a judge to change the terms of supervision for people on PRCS if they have violated them for a third time. In addition, the proposition requires state parole and county probation departments to exchange more information about the people they supervise.

Proposition 57 Release Consideration Process

Background

People in prison have been convicted of a primary crime. This is generally the crime for which they receive the longest amount of time in prison. They often serve additional time due to the facts of their cases (such as if they used a gun) or for other, lesser crimes they were convicted of at the same time. For example, people previously convicted of a serious or violent crime generally must serve twice the term for any new felony they commit.

In November 2016, voters approved Proposition 57, which changed the State Constitution to make prison inmates convicted of nonviolent felonies eligible to be considered for release after serving the term for their primary crimes. Inmates are considered for release by the state Board of Parole Hearings (BPH). Specifically, a BPH staff member reviews various information in the inmate’s files, such as criminal history and behavior in prison, to determine if the inmate will be released. BPH also considers any letters submitted by prosecutors, law enforcement agencies, and victims about the inmate. The California Department of Corrections and Rehabilitation (CDCR) contacts victims registered with the state to notify them that they can submit such letters. The inmate is released unless BPH decides that the inmate poses an unreasonable risk of violence. If not released, the inmate can request a review of the decision. Inmates who are denied release are reconsidered the following year, though they often complete their sentences and are released before then. In 2019, BPH considered nearly 4,600 inmates and approved about 860 (19 percent) for release.

Proposal

Changes Proposition 57 Release Consideration Process. Proposition 20 makes various changes to the Proposition 57 release consideration process. The major changes are:

- Excluding some inmates from the process—such as those convicted of some types of assault and domestic violence.
- Requiring BPH to deny release to inmates who pose an unreasonable risk of committing felonies that result in victims, rather than only those who pose an unreasonable risk of violence.
- Requiring BPH to consider additional issues, such as the inmates’ attitudes about their crimes, when deciding whether to release them.

- Requiring inmates denied release to wait two years (rather than one) before being reconsidered by BPH.
- Allowing prosecutors to request that BPH perform another review of release decisions.
- Requiring CDCR to try to locate victims to notify them of the review even if they are not registered with the state.

DNA Collection

Background

In California, DNA samples must be provided by (1) adults arrested for, charged with, or convicted of a felony; (2) youth who have committed a felony; and (3) people required to register as sex offenders or arsonists. These samples are collected by state and local law enforcement agencies and submitted to the California Department of Justice (DOJ) for processing. DOJ currently receives roughly 100,000 DNA samples each year. DOJ stores the DNA profiles in a statewide DNA database and submits them to a national database. These databases are used by law enforcement to investigate crimes.

Proposal

Expands DNA Collection. This proposition requires state and local law enforcement to also collect DNA samples from adults convicted of certain misdemeanors. These crimes include shoplifting, forging checks, and certain domestic violence crimes.

Fiscal Effects

The proposition would have various fiscal effects on state and local government. However, the exact size of the effects discussed below would depend on several factors. One key factor would be decisions made by the courts and others (such as county probation departments and prosecutors) about how the proposition would be implemented. For example, the proposition seeks to change certain inmates' constitutional eligibility to be considered for release under Proposition 57 without changing the State Constitution. If the proposition were challenged in court, a judge might rule that certain provisions cannot be put into effect. Our estimates below of the fiscal effects on state and local government assume that the proposition is fully implemented. In total, the estimated increase in state costs reflects less than one percent of the state's current General Fund budget. (The General Fund is the state's main operating account, which it uses to pay for education, prisons, health care, and other services.)

State and Local Correctional Costs. The proposition would increase state and local correctional costs in three ways.

- First, the increase in penalties for theft-related crimes would increase correctional costs mostly by increasing county jail populations and the level of community supervision for some people.
- Second, the changes to community supervision practices would increase state and local costs in various ways. For example, the requirement that county probation officers seek to change the terms of supervision for people on PRCS who violate them for a third time could increase county jail populations if this causes more people to be placed in jail.

- Third, the changes made to the Proposition 57 release consideration process would increase state costs by reducing the number of inmates released from prison and generally increasing the cost of the process.

We estimate that more than several thousand people would be affected by the proposition each year. As a result, we estimate that the increase in **state and local correctional costs would likely be in the tens of millions of dollars annually**. The actual increase would depend on several uncertain factors, such as the specific number of people affected by the proposition.

State and Local Court-Related Costs. The proposition would increase state and local court-related costs. This is because it would result in some people being convicted of felonies for certain theft-related crimes instead of misdemeanors. Because felonies take more time for courts to handle than misdemeanors, workload for the courts, county prosecutors and public defenders, and county sheriffs (who provide court security) would increase. In addition, requiring probation officers to ask judges to change the terms of supervision for people on PRCS after their third violation would result in additional court workload. We estimate that these **court-related costs could be more than several million dollars annually**, depending on the actual number of people affected by the proposition.

State and Local Law Enforcement Costs. The proposition would increase state and local law enforcement costs by expanding the number of people who are required to provide DNA samples, possibly by tens of thousands annually. We estimate that the increase in **state and local law enforcement costs would likely not be more than a few million dollars annually**.

Other Fiscal Effects. There could be other unknown fiscal effects on state and local governments due to the proposition. For example, if the increase in penalties reduces crime, some criminal justice system costs could be avoided. The extent to which this or other effects would occur is unknown.

YES/NO STATEMENT

A **YES** vote on this measure means: People who commit certain theft-related crimes (such as repeat shoplifting) could receive increased penalties (such as longer jail terms). Additional factors would be considered for the state's process for releasing certain inmates from prison early. Law enforcement would be required to collect DNA samples from adults convicted of certain misdemeanors.

A **NO** vote on this measure means: Penalties for people who commit certain theft-related crimes would not be increased. There would be no change to the state's process for releasing certain inmates from prison early. Law enforcement would continue to be required to collect DNA samples from adults only if they are arrested for a felony or required to register as sex offenders or arsonists.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT

- Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily due to increases in county jail populations and levels of community supervision.
- Increased state and local court-related costs that could be more than several million dollars annually.

- Increased state and local law enforcement costs not likely to be more than a few million dollars annually related to collecting and processing DNA samples.

BALLOT LABEL

Fiscal Impact: Increase in state and local correctional, court, and law enforcement costs likely in the tens of millions of dollars annually, depending on implementation.