



December 14, 2021

Hon. Rob Bonta  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to felony sentencing (A.G. File No. 21-0035, Amendment No. 1).

## Background

***Felony Sentencing.*** 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 illegal drugs to a minor or making criminal threats of violence—are defined only as serious. Felonies that are not classified as violent or serious include human trafficking and sale of illegal drugs to adults. People convicted of felonies can be sentenced to one of the following:

- ***State Prison.*** People who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison.
- ***County Jail and/or Community Supervision.*** People who have no current or prior convictions for serious, violent, or sex offenses are typically sentenced to county jail or supervision in the community by a county probation officer, or both. In addition, depending on the discretion of the judge and what crime was committed, some people who have current or prior convictions for serious, violent, or sex offenses can receive similar sentences.

***Three Strikes Law.*** In 1994, the California Legislature and voters (with the passage of Proposition 184) changed felony sentencing law to impose longer prison sentences on people who have certain prior felony convictions (commonly referred to as the “three strikes” law). Specifically, a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies is currently sentenced 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. People who receive this sentencing enhancement are referred to as “second strikers.”
- ***Third Strike Offense.*** If the person has two or more previous serious or violent felony convictions, the sentence for any new serious or violent felony conviction is a minimum sentence of 25-years-to-life in prison. In addition, people with two or more previous serious or violent convictions who commit a new nonserious, nonviolent felony can be similarly sentenced to a life term if (1) the new felony is a certain offense (such as selling large quantities of illegal drugs) or (2) the person’s prior offenses included certain crimes (such as homicide or various sex crimes). People who receive the above sentencing enhancements are referred to as “third strikers.”

As of October 31, 2021, there were 23,800 second strikers and 6,100 third strikers in state prison. While state law requires the sentences described above, courts can, under certain circumstances, choose not to consider prior felonies during sentencing—resulting in shorter prison sentences than required under the three strikes law.

***Prison Release Determination.*** Second strikers are generally released from prison automatically after serving the sentence imposed by the court less any time reduced for sentencing credits earned through good behavior or participation in rehabilitation programs. In contrast, third strikers are only released from prison upon approval by the Board of Parole Hearings (BPH). The board generally considers the release of third strikers after they serve the minimum number of years required by their sentences (less any sentencing credits). For example, BPH would consider the release of a third striker sentenced to 25-years-to-life with 5 years of sentencing credits after the person served 20 years in prison. If BPH decides not to release the third striker at that time, the board would periodically reconsider releasing the inmate until the person is released or dies in prison.

***Post-Release Supervision.*** People released from prison are generally required to be supervised in the community for a period of time after release, typically less than three years. People with current serious or violent convictions as well as all third strikers are supervised by state parole agents. The remaining people released from prison are generally supervised in the community by county probation officers (commonly referred to as Post Release Community Supervision or PRCS). We note people whose sentences are reduced by a court while they are in prison can be supervised for shorter periods of time or not all, depending on the extent to which they already served more time than required by their new shorter sentence.

***Annual Required Spending on Education.*** The California Constitution requires the state to spend a minimum amount on K-12 schools and community colleges each year. This “minimum guarantee” grows over time based on growth in state tax revenues, the economy, and student attendance. This year, the state General Fund will provide over \$66 billion towards the minimum guarantee, with an additional \$27 billion coming from local property taxes. (The General Fund is the state’s main operating account, which pays for education, prisons, health care, and other public services.)

## Proposal

***Eliminates Three Strikes Law and Requires Resentencing.*** This measure eliminates the state's three strikes law, thereby reducing the amount of time most people who would otherwise be second and third strikers serve in prison. The measure also allows current second and third strikers to apply for resentencing and requires courts to give them shorter sentences that do not include second or third strike enhancements.

***Allocates State Savings From Sentencing Changes to Other Purposes.*** The measure requires that any savings to the state from the above changes, as estimated by the Department of Finance (DOF), be annually transferred from the General Fund into a new state fund, the Left Behind Act Fund. Under the measure, monies in the fund would be allocated as follows:

- 20 percent to public K-12 schools for youth mentoring programs in under-resourced schools, as well as for staffing.
- 20 percent to California community colleges to offset tuition for low-income applicants and students.
- 20 percent to the California State University system to offset tuition for low-income applicants and students.
- 20 percent to “restorative justice” programs, such as victim-offender reconciliation programs.
- 20 percent to transitional housing programs designed to assist people experiencing homelessness in obtaining the skills necessary for independent living in permanent housing.

The measure specifies that funding allocated to schools and community colleges from the Left Behind Act Fund shall be considered General Fund appropriations that count towards meeting the state's constitutionally required spending level for education.

## Fiscal Effects

***State Criminal Justice System Impacts.*** The measure would have various impacts on the state's criminal justice system. Most significantly, the measure would reduce the state prison population. This is because the measure would (1) reduce the amount of time people who would otherwise be sentenced as second and third strikers serve in prison and (2) result in resentenced second and third strikers being released from prison earlier than otherwise. We estimate that these changes could initially reduce the prison population by a few thousand inmates, primarily due to the resentencing of second and third strikers. This population reduction would grow in future years, potentially reaching the low tens of thousands of inmates. The fiscal impact of these population reductions would depend on how the state chooses to accommodate the decline in the inmate population. For example, if the state accommodates the decline by closing prisons, state prison savings could eventually exceed \$1 billion annually. If the state instead houses fewer inmates while operating the same number of prisons, the savings could be in the low hundreds of millions of dollars annually.

The measure would also have major impacts on state parole and court costs. Specifically, because people would be released from prison earlier than otherwise, the measure would accelerate their placement onto state or county community supervision. Depending on certain factors, such as their current offense, a portion of these people would be placed under the supervision of state parole. (As discussed below, the remainder would be placed on county PRCS.) We also note that some of the people who are resentenced would be supervised on parole for less time than otherwise because they will have served more time in prison than their new sentence requires. Collectively, we estimate that these effects would result in a temporary net increase in state parole costs, which could be in the tens of millions of dollars annually. In addition, the measure would result in one-time costs for state courts to manage resentencing hearings for second and third strikers. We estimate that these costs would be unlikely to exceed the low tens of millions of dollars, though the actual cost would depend on how many people petition to be resentenced and the workload required for each case.

In total, we estimate that the measure could eventually result in net state criminal justice savings ranging from the low hundreds of millions of dollars to more than \$1 billion annually. As noted earlier, any state savings resulting from the measure, as estimated by DOF, would be deposited in the Left Behind Act Fund for specified purposes. We note that the actual amount deposited in the fund would depend on various factors, such as the observed decline in the inmate population and the methodology used to calculate the associated savings. Under the measure, at least 40 percent of the money in the fund would be allocated to public K-12 schools and community colleges and would count toward the state's constitutionally required spending on education. If the state were to keep total spending at the constitutional minimum, the measure would result in no net increase in funding to schools and community colleges. This would free up General Fund resources that could be spent on other purposes equivalent to the amount counted toward the constitutional minimum under the measure.

***County Criminal Justice System Impacts.*** The measure would have various impacts on county criminal justice systems. Most significantly, similar to how the measure would impact state parole, it would accelerate the placement of people onto county PRCS due to them being released from prison earlier than otherwise. We also note that some of the people who are resentenced would be supervised on PRCS for less time than otherwise because they will have served more time in prison than their new sentence requires. Collectively, we estimate that these effects would result in a temporary net increase in county PRCS costs, which could be in the tens of millions of dollars annually. In addition, the measure would result in one-time costs for district attorneys, public defenders, and county sheriffs' departments to staff resentencing hearings for second and third strikers. We estimate that these costs would be unlikely to exceed the low tens of millions of dollars, though the actual cost would depend on how many people petition to be resentenced and the workload required for each case. In total, we estimate that the measure would result in a temporary increase in county costs, which could be in the tens of millions of dollars annually.

***Other Fiscal Impacts.*** This measure could also result in a variety of other fiscal effects on state and local governments. For example, under the measure, some of the state savings would be used to support programs that could reduce participants' likelihood of committing crimes, such

as transitional housing programs. Accordingly, the measure could result in future additional savings to the state and counties. In addition, governments would incur additional costs to the extent that people released from prison because of this measure require government services (such as government-paid health care for persons without private insurance coverage) or commit additional crimes. The magnitude and net effect of such impacts are unknown.

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

- Net state criminal justice system savings that could range from the low hundreds of millions of dollars to over \$1 billion annually, which would be spent on education, restorative justice, and transitional housing.
- Temporary increase in county criminal justice system costs that could be in the tens of millions of dollars annually.

Sincerely,

---

for Gabriel Petek  
Legislative Analyst

---

for Keely Martin Bosler  
Director of Finance