



January 12, 2022

Hon. Rob Bonta
Attorney General
1300 I Street, 17th 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 theft crimes (A.G. File No. 21-0041, Amendment No. 1).

Background

Felony Sentencing. There are three types of crimes: felonies, misdemeanors, and infractions. 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 illegal drugs. People convicted of felonies can be sentenced to one of the following:

- ***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 supervision in the community by a county probation officer, or both.

Misdemeanor Sentencing. A misdemeanor is a less severe crime than a felony. Misdemeanors include crimes such as assault and public drunkenness. 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 as misdemeanor crimes typically carry maximum punishments of six months or one year in county jail. In addition, people convicted of misdemeanors are usually supervised in the community for less time and may not be supervised as closely by probation officers.

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Wobbler Sentencing. Currently, some crimes—such as identity theft—can be sentenced as either a felony or a misdemeanor. These crimes are known as “wobblers.” The sentencing decision on wobblers is left to the court and is generally based on the specific circumstances of the crime and the criminal history of the person being sentenced.

Sentence Enhancements. In addition to the term people receive for the crime they committed, state law includes various enhancements that can increase people’s sentences depending on the circumstances of their crimes or their criminal histories. For example, a person who committed a serious felony for the benefit of a gang can receive an additional prison term of five years.

Proposition 47. In November 2014, voters approved Proposition 47, which resulted in certain theft-related crimes being reduced from wobblers to misdemeanors. For example, under Proposition 47, petty theft (theft involving property worth \$950 or less) is generally punished as a misdemeanor—rather than as a wobbler as was sometimes possible before (such as if a car was stolen). Proposition 47 also generally requires that shoplifting (stealing property worth \$950 or less from a commercial establishment) be punished as a misdemeanor—rather than a wobbler as was possible before.

Because Proposition 47 reduced the number of wobblers, it reduced the number of people that could receive felony convictions and be sentenced to state prison. Proposition 47 requires that the annual savings to the state resulting from the proposition’s sentencing changes (as estimated by the Department of Finance) be spent on mental health and substance use services, truancy and dropout prevention, and victim services. For 2020-21, the estimated state savings is about \$116 million.

Proposal

Increases Penalties for Certain Repeat Theft Crimes. This measure changes state law to make petty theft and shoplifting punishable as wobblers rather than misdemeanors for people who have two or more prior convictions for certain theft-related crimes, such as shoplifting, burglary, or carjacking. Under the measure, such people could receive sentences of up to three years in county jail or state prison rather than up to six months in county jail under current law.

Creates Sentence Enhancements for Felonies Involving High Dollar Amounts of Theft or Damage. This measure creates sentence enhancements for people convicted of felonies in which a high dollar amount of property was stolen or damaged, with longer enhancement terms for larger dollar amounts. For example, if the affected property is worth more than \$50,000, a year would be added to the person’s sentence. If the property is worth more than \$200,000, then two years would be added.

Fiscal Effects

Increased State Criminal Justice System Costs. The measure would increase the state prison population in two ways. First, by making petty theft and shoplifting punishable as wobblers in certain cases, the measure would increase the number of people sentenced to prison. Second, people sentenced to state prison for felonies involving high dollar amounts of theft or damage would receive longer prison sentences due to the sentence enhancements created by the measure.

In total, we estimate that the measure could increase the prison population by the low thousands of inmates—resulting in increased state costs in the low tens of millions of dollars annually. We note that this estimate is based on the limited data available, and the actual number of people affected would depend on decisions made by courts. As such, the actual impact on state prison costs could be significantly higher or lower.

The measure would also increase state court costs. By allowing petty theft and shoplifting to be punished as wobblers in certain cases, this measure would increase the number of felony filings and reduce the number of misdemeanor filings in court. As a result, workload for the courts would increase as felonies take more time to adjudicate than misdemeanors. We estimate that the resulting increase in state court costs could be around a few million dollars annually, depending on the actual number of people affected by the measure.

In total, we estimate that the measure could increase state criminal justice system costs in the low tens of millions of dollars annually. Because this measure would undo certain reductions in punishment for petty theft and shoplifting enacted by Proposition 47, this measure would reduce the state savings attributable to Proposition 47. Accordingly, the state criminal justice system costs resulting from this measure could be partially offset by a reduction in the amount of Proposition 47 savings spent on mental health and substance use services, truancy and dropout prevention, and victim services. However, the extent to which this occurs would depend on the methodology used to estimate the state savings attributable to Proposition 47.

Increased County Criminal Justice System Costs. The measure would increase county jail and community supervision populations in two primary ways. First, by making petty theft and shoplifting punishable as wobblers in certain cases, the measure would result in some people receiving longer county jail and/or community supervision terms. Second, people sentenced to county jail and/or community supervision for felonies involving high dollar amounts of theft or property damage would receive longer sentences due to the sentence enhancements created by the measure. These increases in county correctional populations would be partially offset by some people convicted of petty theft or shoplifting being sentenced to state prison rather than county jail and/or community supervision. On net, we estimate that the measure could increase county correctional populations by around a few thousand people—resulting in increased county costs in the low tens of millions of dollars annually. We note that this estimate is based on the limited data available, and the actual number of people affected would depend on decisions made by courts. As such, the actual impact on county correctional costs could be significantly higher or lower.

The measure would also increase county court-related costs. The expected increase in felony filings discussed above would increase workload primarily for county district attorneys and public defenders. We estimate that the resulting increase in county court-related costs could be around several million dollars annually, depending on the actual number of people affected by the measure.

In total, we estimate that the measure could increase county criminal justice system costs in the low tens of millions of dollars annually.

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

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

- Increased state criminal justice system costs potentially in the low tens of millions of dollars annually, primarily due to an increase in the state prison population. Some of these costs could be offset by reductions in certain spending on mental health and substance use services, truancy and dropout prevention, and victim services due to requirements in current law.
- Increased county criminal justice system costs potentially in the low tens of millions of dollars annually, primarily due to increases in county jail and community supervision populations.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance