



October 25, 2023

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 drug crimes (A.G. File No. 23-0023, Amendment #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. While almost all violent felonies are also considered serious, other felonies—such as distributing (including selling or giving away) certain illegal drugs (like heroin) to minors—are defined only as serious. Felonies that are not defined as violent or serious include distributing illegal drugs to adults. People convicted of felonies can be sentenced to one of the following:

- ***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 county community supervision, or both.
- ***State Prison.*** People whose current or past convictions include serious, violent, or sex crimes can be sentenced to state prison.

The sentence lengths for people convicted of felonies vary based on the severity of the crime. For example, distribution of certain opioids (such as fentanyl) can be punished by up to five years served at the county level or in state prison. In contrast, murder is typically punishable by a prison sentence of life with the possibility of parole, meaning people convicted of murder are generally not released until the Board of Parole Hearings determines they do not pose a threat to public safety. In addition, state law allows for increased sentences for people who have prior

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convictions for serious or violent felonies. Notably, 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. If the person has two or more previous serious or violent felony convictions, the sentence for any new serious or violent felony conviction is life with the possibility of parole.

Post-Release Supervision. People released from state 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 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 (PRCS). People released from county jail after completing their sentence are not required to be supervised in the community.

Proposal

Creates New Serious Felony for Selling Certain Opioids Causing Death. As discussed above, distributing certain opioids (such as fentanyl) is generally a nonserious, nonviolent felony that can be punished by up to five years in county jail or state prison. This measure makes selling these drugs to someone who dies as a result a serious felony, punishable by up to 12 years in state prison. Under certain circumstances, as we discuss below, such cases could be punishable as murder.

Requires Warning of Future Criminal Liability for People Convicted of Drug Distribution. The measure requires courts to warn people convicted of distributing certain illegal drugs (such as fentanyl, heroin, cocaine, and methamphetamine) that illegal drugs can be deadly. Moreover, the warning to these people shall specify that if, in the future, they distribute (including selling or giving away) any illegal drugs to someone who dies as a result, they could be charged with murder.

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 key factors. In particular, the fiscal effects would depend on how certain provisions in the measure are implemented, such as how local prosecutors choose to charge people arrested for the crimes affected by the measure and how that differs from current practices. There are limited data available on current practices. In addition, the fiscal effects would depend heavily on the number of crimes affected by the measure that are committed in the future. Thus, the fiscal effects of the measure described below are subject to significant uncertainty.

Increased State Criminal Justice System Costs. The measure would increase the state prison population in two primary ways. First, the measure would require some people who currently serve their sentences at the county level to instead serve their sentences in prison. For example, people who are convicted of selling drugs and serve their sentences at the county level under current law could instead—if they caused a death and previously received a warning required by the measure—be convicted of murder under the measure and serve their sentences in prison.

Second, those who are sentenced to prison under current law could receive longer prison sentences in various ways under the measure. For example, people who receive five years in prison (such as because they were previously convicted of a sex crime) for selling fentanyl under current law could instead receive up to 12 years for selling fentanyl resulting in death under the measure. In addition, prison terms could be further increased due to existing provisions in state law that allow for increased sentences for people with prior convictions for serious or violent felonies. For example, someone convicted of selling fentanyl resulting in death who has two prior convictions for serious or violent felonies could receive a sentence of life with the possibility of parole under the measure. Because the measure would increase the number of people sentenced to prison for serious or violent felonies, it would also increase the state parole population. In total, we estimate that the increase in the prison and parole population could be in the hundreds to low thousands of people, resulting in increased state costs likely in the tens of millions of dollars annually.

The measure would also increase state court workload. For example, with more serious penalties—such as life with the possibility of parole—at stake, cases affected by the measure could take more time to resolve in court. We estimate that the resulting increase in state court costs could range from the hundreds of thousands of dollars to the low millions of dollars annually.

In total, we estimate that the measure would increase state criminal justice system costs likely in the tens of millions of dollars annually.

Reduced County Criminal Justice System Costs. The measure would reduce the number of people in county jail and under county community supervision in two ways. First, as discussed above, the measure would cause some people to serve their sentences in prison instead of at the county level, reducing the number of people in jail and under county community supervision. Second, because the measure would cause some people to be sentenced to prison for serious or violent felonies instead of nonserious, nonviolent felonies, it would cause them to be released to parole instead of PRCS. This would reduce the PRCS population. In total, we estimate that the county jail and supervision population could decrease by hundreds of people, resulting in reduced county correctional costs likely in the millions of dollars annually.

The measure would also increase county court-related workload. For example, the increased penalties at stake, which would lengthen the time of cases affected by the measure, would increase workload for county prosecutor and public defender offices. We estimate that the resulting increase in county court-related costs could be in the hundreds of thousands of dollars annually.

In total, we estimate that the measure would, on net, reduce county criminal justice system costs likely in the 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 likely in the tens of millions of dollars annually, primarily due to an increase in the state prison population.
- Reduced county criminal justice system costs likely in the millions of dollars annually, primarily due to a reduction in the number of people in county jail and under county community supervision.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Joe Stephenshaw
Director of Finance