

January 28, 2010

# The Governor's Special Session Proposal to Reduce The Prison Population

---

LEGISLATIVE ANALYST'S OFFICE

Presented to:

Senate Budget and Fiscal Review Committee

Hon. Denise Moreno Ducheny, Chair





## Governor's Budget Assumes Only One-Half Of 2009-10 Savings Will be Achieved

*(In Millions)*

Change	Enacted 2009-10	Revised 2009-10	Projected 2010-11
Rehabilitation program reductions	\$250	\$250	\$250
Commutation of sentences	182	4	13
Summary parole <sup>a</sup>	179	27	230
Inmate credit changes	42	12	97
Changes in property crime thresholds	34	0	0
Probation incentive program	30	0	30
GPS monitoring units	13	1	1
Parolee re-entry courts	10	0	10
Administrative and programmatic changes	217	278	148
Unallocated reduction	228	—	—
<b>Totals</b>	<b>\$1,186</b>	<b>\$572</b>	<b>\$779</b>

<sup>a</sup> Does not include certain operational savings.

- ✓

The enacted budget assumed \$1.2 billion in savings in the budget of the California Department of Corrections and Rehabilitation (CDCR) from various administrative and programmatic changes, as well as from policy changes to reduce the inmate and parole populations.
  
- ✓

However, the Governor's budget reflects that only about one-half of the assumed \$1.2 billion savings will be realized in the current year. The reduced level of savings is related to implementation delays, lower savings than estimated, and the absence of a complete plan to achieve the full level of savings.



## Governor's Special Session Proposal: Jail Time for Specified Felonies

---

- The Governor proposes to require that certain felonies that are eligible for incarceration in state prison would be converted to felony convictions punishable by not more than 366 days in county jail.
- The affected felonies that would be converted include various drug and property crimes, which all are so-called "wobbler" crimes that currently can be tried either as misdemeanors or felonies.
- Offenders convicted of these crimes who have a prior conviction for a serious or a violent felony would continue to be eligible for incarceration in state prison.



## Impact of Governor's Special Session Proposal

(In Millions)

Offense Category	2009-10		2010-11		2011-12	
	ADP <sup>a</sup>	Savings	ADP	Savings	ADP	Savings
Drug possession	233	\$4.9	2,299	\$53.0	2,520	\$58.0
Possession of controlled substance	165	3.5	1,626	37.4	1,782	41.0
Possession for sale/sale of controlled substance	230	4.9	2,833	65.2	3,888	89.5
Grand theft	120	2.5	1,386	31.9	1,702	39.2
Auto theft	167	3.5	1,496	34.5	1,586	36.5
Auto theft with a prior	32	0.7	398	9.2	600	13.8
Petty theft with a prior	121	2.6	1,318	30.0	1,537	35.4
Check fraud	10	0.2	102	2.3	114	2.6
Receiving stolen property	115	2.4	1,204	27.7	1,366	31.5
<b>Totals</b>	<b>1,193</b>	<b>\$25.2</b>	<b>12,662</b>	<b>\$291.6</b>	<b>15,095</b>	<b>\$347.6</b>

<sup>a</sup> Average daily population.



The administration estimates that, if approved by March 1, 2010, the proposed changes would save \$25.2 million in 2009-10 and \$291.6 million in 2010-11, as well as reduce the average daily inmate population by about 15,000 inmates upon full implementation.



## Governor's Proposal Has Merit, But Some Shortcomings

---

- ☑ ***Achieves Significant Savings, but Appears Overstated.*** The estimated savings appear overstated because it does not take into account (1) possible delays to lay off staff and cancel existing contracts, (2) overlap with other population reduction measures recently adopted, and (3) other implementation issues.
- ☑ ***Alleviates Prison Overcrowding and Possibly Reduces Construction Needs.*** The proposal would put the state closer to meeting a potential court-ordered reduction in the inmate population reduction. Moreover, it could reduce the need for future prison construction projects.
- ☑ ***Mitigates Some Public Safety Impacts.*** The proposal would still allow for the incapacitation of these offenders—in county jail rather than state prison. Since most of these offenders spend less than one year in prison on average it appears more efficient and appropriate to house them in short-term county jail.
- ☑ ***But Places Pressures on Local Governments.*** Since roughly half of all county jails are under population caps, some jails would simply release other inmates early to “free up” limited beds. While such releases would likely be for lower-level offenders, this could raise some local public safety concerns.
- ☑ ***And Could Have Unintended Consequences.*** The proposed budget trailer legislation could be interpreted to mean that offenders with a prior serious or violent felony must be convicted of a felony if they commit one of the crimes specified. This is a departure from current law which states that these offenders could be convicted of either a felony or a misdemeanor. Such a change would increase the likelihood that they are sentenced to prison.



## Approve Governor's Proposal With Modifications

---

- Reduce Savings Estimates.*** Recommend approving the Governor's proposal since it would achieve significant savings and alleviate inmate overcrowding, while still allowing for the incarceration of all offenders convicted of the specified crimes. However, recommend reducing the assumed savings to a more realistic level of \$5 million in 2009-10 and \$250 million in 2010-11.
  
- Allow Counties to Expand Use of Alternatives to Incarceration.*** Recommend adopting statutory changes permitting counties to place additional jail inmates on electronic home monitoring in lieu of incarceration, in order to further alleviate the impact of the Governor's proposal on county jails. (Current state law authorizes counties to only place certain jail inmates, such as those convicted of misdemeanors, under such surveillance.)
  
- Revise Proposed Budget Trailer Legislation.*** Recommend revising the administration's proposed legislation to clarify that offenders who are charged with the specified wobbler crimes and who have prior serious or violent offenses would still be eligible to be tried for a misdemeanor, as is the case under current law.