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Implementation of Proposition 57

LEGISLATIVE ANALYST'S OFFICE

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Assembly Budget Subcommittee No. 5 on Public Safety
Hon. Shirley N. Weber, Chair





Major Provisions of Proposition 57



Makes All Nonviolent Offenders Eligible for Parole Consideration

- Amended the State Constitution to specify that individuals convicted of a nonviolent felony offense shall be eligible for parole consideration after completing the term for their primary offense.
- As a result, the Board of Parole Hearings (BPH) can release nonviolent offenders after they serve the longest term imposed excluding any additional terms added to their sentence, which include any sentencing enhancements (such as the additional time an inmate serves for having prior felony convictions).



Expands the California Department of Corrections and Rehabilitation's (CDCR) Authority to Award Sentencing Credits

- Amended the State Constitution to specify that CDCR shall have the authority to award credits to inmates for good behavior and rehabilitative or educational achievements.
- As a result, CDCR can allow inmates to reduce their sentences through credits by more than is currently allowed in statute.



Requires a Judge to Decide Whether Youths Should Be Tried in Adult Court

- Changed statute to require that all youths have a hearing in juvenile court before they can be transferred to adult court.
- As a result, prosecutors can no longer file charges directly in adult court and no youths can have their cases heard in adult court on a mandatory basis due to the circumstances of the offense.



Implementation of Parole Consideration Process

- Exclusion of Certain Offenders With Nonviolent Convictions**
 - The emergency regulations define “nonviolent offenders” in such a way as to exclude nonviolent offenders required to register as sex offenders and those who are serving indeterminate sentences under the three strikes law from the new parole consideration process.

- Inclusion of Certain Offenders With Violent Convictions**
 - The definition would make eligible for parole consideration certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony of which they were convicted at the same time.

- Inmate File Reviews Rather Than Actual Hearings**
 - Rather than in-person hearings, a BPH deputy commissioner would review certain information about an inmate collected by CDCR. The inmate would be approved for parole if the deputy commissioner concluded the inmate does not pose an unreasonable risk of violence.

- Review Initiated After Primary Term Served**
 - The administration interprets Proposition 57 to prohibit deputy commissioners from reviewing inmates’ files until they have served the terms for their primary offenses. As a result, inmates that are granted parole would not be released until after reentry planning is completed—about 60 days after completing their primary terms.



LAO Assessment of New Parole Consideration Process



Direct Administration to Justify Definition of Nonviolent Offender

- The exclusion of certain offenders (such as sex registrants) convicted of nonviolent offenses and inclusion of certain offenders convicted of violent offenses may violate Proposition 57.
- Accordingly, we recommend directing the administration to justify the legal and policy basis for its definition of nonviolent offender.



Assess Whether BPH Could Initiate Parole Consideration Earlier

- Rather than waiting until their primary terms are served, BPH could make a *preliminary* release decision before inmates complete their primary terms. A *final* parole consideration decision would be made upon the completion of their terms. As a result, those approved could be released up to 60 days earlier, potentially resulting in several millions of dollars in savings annually.
- Accordingly, we recommend seeking an opinion from Legislative Counsel on whether this approach is allowable.



Direct BPH to Investigate Using Structured Decision-Making Tools

- Because the parole decision-making process is inherently subjective and decisions may lack consistency and transparency, several states use statistically validated, structured decision-making tools to improve accuracy and objectivity of such decisions.
- We recommend directing BPH to report on available structured decision-making tools and the estimated costs, opportunities, and challenges associated with adapting such tools for use in California.



Implementation of New Sentencing Credits

Inmates Affected	Current	Planned
Good Conduct Credits		
Most violent offenders	Up to 15%	Up to 20%
Nonviolent third strikers	—	Up to 33.3%
Inmates in fire camps, firehouses, or who have completed training for these assignments		
• Violent	Up to 15%	Up to 50%
• Nonviolent second strikers	Up to 33.3%	Up to 66.6%
Milestone Credits		
Non-sex registrant, nonviolent, non-third strikers	Up to 6 weeks per year	Up to 12 weeks per year
All other inmates except those sentenced to death and life without the possibility of parole	—	Up to 12 weeks per year
New Educational Merit Credits		
All inmates except those sentenced to death and life without the possibility of parole	—	3 to 6 months per achievement
New Participation Credits		
All inmates except those sentenced to death and life without the possibility of parole	—	Up to 4 weeks per year



Expands Sentencing Credits

- As shown above, the administration plans to increase the number of credits inmates earn for good behavior (effective May 1, 2017) and for participation in rehabilitation programs (effective August 1, 2017).



Codifies Court-Ordered Credits

- A federal court order to reduce prison overcrowding required CDCR to implement certain credits. The administration included these court-ordered changes in the emergency regulations so that inmates will continue to receive these credits once the court order is lifted.



LAO Assessment of New Sentencing Credits



Direct Department to Assess Effect of Program Capacity on Population Impact of New Credit Policies

- The population effect of the credit expansions will depend on inmates' access to rehabilitation programs. However, the administration has not done an analysis of how the availability of these programs will impact credit earning.
- Accordingly, we recommend directing the department to report at budget hearings on the number and type of programs through which inmates would receive credits, their current capacity and attendance rates, and the effect they may have on the inmate population.



Direct Administration to Contract With Independent Researchers to Evaluate Credit-Yielding Programs

- To protect public safety, it is critical that programs for which inmates receive credits are effective at reducing recidivism. However, CDCR currently has only done a limited analysis of the effectiveness of its programs.
- As such, we recommend directing CDCR to contract with independent researchers (such as a university) to evaluate the effectiveness of its programs and that it prioritize credit-yielding programs for evaluation.



Direct Administration to Explain Credit Reductions

- The administration plans to reduce credits awarded for a few programs. It is unclear why the administration chose to reduce credits awarded for these programs.
- Accordingly, we recommend directing the administration to report during budget and policy hearings on its rationale for reducing milestone credits for specific programs.



Fiscal Impacts Related to Proposition 57

(In Millions)

	2017-18
Staff and resources to implement new parole consideration process and credit policies	\$6.5
Inmate population reduction	-47.8
Parolee population increase	7.1
Juvenile population increase	4.8
Grants to counties for increased post release community supervision population	6.4
Total	-\$23.0
<small>^a Calculated based on administration's population estimates made before release of emergency regulations.</small>	



Various Budget Adjustments Related to Proposition 57 Implementation

- As part of the Governor's January budget proposal for 2017-18, the administration outlined its plan to implement Proposition 57. This plan was revised somewhat and formalized in emergency regulations submitted to the Office of Administrative Law (OAL) on March 24, 2017.
- The January budget reflects the administration's estimates for how its initial plan would impact the state's inmate, parolee, and juvenile ward populations; and the number of offenders supervised by county probation departments. It does not reflect some changes made to the plan by the emergency regulations.



LAO Assessment of Administration's Budget Requests



Withhold Action on Budget Adjustments Pending the May Revision

- The administration indicates that it will propose budgetary changes to reflect its current implementation plan (as reflected in the emergency regulations) as part of the May Revision.
- As such, we recommend withholding action on all of the Governor's budget proposals related to Proposition 57 implementation costs and population impacts.



Direct Administration to Report on Final Regulations

- The final regulations could ultimately be different than the emergency regulations if CDCR chooses to modify them, such as in response to public comments received through the rulemaking process.
- Accordingly, we recommend directing the administration to provide a report no later than 30 days after the regulations are finalized. This report should (1) summarize the final regulations, (2) discuss how the final regulations differ from the emergency regulations (including justification for any differences), and (3) identify how the changes affect CDCR's budget and populations.