

FEBRUARY 11, 2020

# **Initiative Statute: Restricts Parole for Non-Violent Offenders. Authorizes Felony Sentences for Certain Offenses Currently Treated Only as Misdemeanors**

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PRESENTED TO:

Senate Public Safety Committee

Hon. Nancy Skinner, Chair

and

Assembly Public Safety Committee

Hon. Reginald B. Jones-Sawyer, Sr., Chair



LEGISLATIVE ANALYST'S OFFICE

## Overview

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- The measure changes state law to (1) increase criminal penalties for certain theft-related crimes, (2) change how offenders are supervised in the community, (3) change the process created by Proposition 57 (2016) for considering the release of certain offenders from prison, and (4) require law enforcement to collect deoxyribonucleic acid (DNA) from adults convicted of certain offenses.
- We discuss in detail each of these major provisions and then describe the major fiscal effects of the measure.



# Criminal Penalties for Certain Theft-Related Crimes

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## ► Background

- **Felony Sentencing.** Offenders convicted of felonies can be sentenced as follows:
  - **State Prison.** Felony offenders who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison.
  - **County Jail and Community Supervision.** Felony offenders who have no current or prior convictions for serious, violent, or sex offenses are typically sentenced to county jail or the supervision of a county probation officer in the community, or both. Depending on the discretion of the judge and what crime was committed, some felony offenders who do have such convictions can receive similar sentences.
- **Misdemeanor Sentencing.** Offenders convicted of misdemeanors may be sentenced to jail, county community supervision, a fine, or some combination of these. Misdemeanor offenders are generally sentenced to shorter periods of incarceration and lower levels of community supervision.
- **Wobbler Sentencing.** Some crimes—such as unauthorized taking of a vehicle—can be charged as either a felony or a misdemeanor. These crimes are known as “wobblers.”



# Criminal Penalties for Certain Theft-Related Crimes

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(Continued)

## ► **Proposal: Increase Penalties for Certain Theft-Related Crimes**

- Creates two new wobbler crimes, punishable by up to three years in jail, including in cases where the person has a prior serious, violent, or sex offense:
  - **Serial Theft.** Any person with two or more past convictions for certain theft-related crimes (such as burglary) who is found guilty of shoplifting or petty theft involving property that is worth more than \$250 could be charged with serial theft.
  - **Organized Retail Theft.** Any person, acting with others who commits petty theft or shoplifting two or more times where the total value of property stolen within 180 days exceeds \$250 could be charged with organized retail theft. (We note that a similar crime currently exists, but will sunset under existing state law a few months after the measure would go into effect.)
- Allows some existing theft-related offenses that are generally punished as misdemeanors to be punished as felonies.



# Community Supervision Practices

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## ► Background

- **State Parole.** Offenders who are released from prison after serving a sentence for a serious or violent crime are supervised for a period of time in the community by state parole agents.
- **Post-Release Community Supervision (PRCS).** Offenders who are released from prison after serving a sentence for other crimes are usually supervised in the community by county probation officers under PRCS.
- **Revocation of Parole or PRCS.** When offenders on parole or PRCS break the rules that they are required to follow while supervised in the community (the “terms of their supervision”), parole and probation departments can ask a judge to change the terms of their supervision, potentially resulting in harsher terms or placement in county jail.

## ► Proposal: Change Community Supervision Practices

- Makes various changes that affect how state parole and county probation departments supervise offenders in the community. The major changes are:
  - Requiring probation departments to ask a judge to change the terms of a PRCS offender’s supervision if he or she has violated them for a third time.
  - Requiring state parole and county probation departments to exchange more information about the offenders they supervise.



# Proposition 57 Release Consideration Process

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## ► Background

- Proposition 57 (2016) amended the State Constitution to specify that prison inmates convicted of a nonviolent felony offense shall be eligible for release consideration after completing the term for their primary offense.
- The California Department of Corrections and Rehabilitation (CDCR) adopted regulations that limit eligibility for the process to inmates who are not sentenced to death or life in prison without the possibility of parole, are not serving a term for a violent felony, and are not required to register as a sex offender.
- Board of Parole Hearings (BPH) staff review information about eligible inmates—such as their criminal history and information submitted by prosecutors and victims—to determine if they do not pose an unreasonable risk to public safety and are suitable for release.

## ► Proposal: Change Proposition 57 Release Consideration Process

- Makes various changes to the Proposition 57 release consideration process. The major changes are:
  - Excluding certain inmates who would otherwise qualify for the release consideration process. For example, inmates sentenced to life with the possibility of parole or convicted of certain types of assault would no longer be eligible.
  - Requiring BPH to deny release to inmates who pose an unreasonable risk of creating victims as a result of future felony activity, rather than only those who pose an unreasonable risk to public safety.
  - Requiring CDCR to make reasonable efforts to locate victims, regardless of whether they are registered with the state, and notify them of the review.



# DNA Collection

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## ► **Background**

- Under current state law, any adult arrested or charged with a felony offense, any juvenile found to have committed a felony offense, or any individual required to register as a sex offender or arsonist is required to provide DNA samples for law enforcement purposes.
- The samples are collected by state and local law enforcement agencies, and are generally processed by the California Department of Justice and local forensic laboratories.

## ► **Proposal: Expand DNA Collection**

- Expands the types of offenders that state and local law enforcement must collect DNA samples from.
- Specifically, it requires them to collect DNA samples from adults convicted of certain misdemeanors. These crimes include shoplifting, forging checks, and certain domestic violence offenses.



## Major Fiscal Effects

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### ► Increased State and Local Corrections Costs

- The measure would increase correctional costs primarily by (1) increasing county jail populations and the level of community supervision for certain offenders, (2) likely reducing the number of inmates who are released under the Proposition 57 release consideration process, and (3) changing community supervision practices.
- A small portion of the above costs would be offset by certain savings, such as from a reduction in the number of offenders reviewed by BPH.

### ► Increased State and Local Court-Related Costs

- The measure's increased penalties for theft-related crimes would increase the number of felony filings and reduce the number of misdemeanor filings in state court.
- In addition, requiring probation departments to petition the court after each PRCS offender's third violation would result in additional court proceedings.

### ► Increased State and Local Law Enforcement Costs

- The measure would increase state and local law enforcement costs associated with collecting and processing additional DNA samples.

