

## The 2010-11 Budget:

# Assessing the Prison Population Reduction Proposal

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As part of the January 2010 special session to begin bringing the 2009-10 and 2010-11 budgets into balance, the Governor proposes statutory changes to reduce the state's inmate and parolee populations. Specifically, the Governor proposes to require that offenders who have no prior serious or violent offenses and are convicted of certain property and drug felony crimes serve a maximum sentence of one year and one day in county jail in lieu of a state prison sentence. The administration estimates that, if approved by March 1, 2010, these changes would reduce state correctional costs by \$25.2 million in 2009-10 and \$291.6 million in 2010-11. *In this brief, we (1) analyze the Governor's proposal, particularly in the context of recent policy actions to reduce the inmate and parole populations, and (2) recommend modifying the Governor's proposal to permit counties to place additional jail inmates on electronic home monitoring.*

### Recent Actions to Reduce State Correctional Populations

**2009-10 Budget Package Assumed Significant Population Reduction.** The 2009-10 budget assumed about \$1.2 billion in savings in the

budget of the California Department of Corrections and Rehabilitation (CDCR). These were to result from various administrative and programmatic changes (such as reductions to inmate and parolee rehabilitation programs), as well as from various policy changes to reduce the inmate and parole populations (as specified in Chapter 28, Statutes of 2009 [SBX3 18, Ducheny]). Some of these changes include: (1) commuting the sentences of and deporting certain undocumented inmates currently incarcerated in prison; (2) making ineligible for revocation to prison parole violations by certain parolees with no serious, violent, or sex offenses; (3) increasing the credits that inmates can earn to reduce their stay in prison; (4) increasing the dollar threshold for certain property crimes to be considered a felony, thus making fewer offenders eligible for prison; and (5) providing fiscal incentives to counties to reduce the number of revocations of persons on probation to state prison. The budget plan assumed that the various changes would reduce the inmate population by roughly 18,500 inmates in 2009-10 and 25,000 inmates in 2010-11 from a base of about 168,000 inmates.

However, the actual reduction in the inmate population from the above policy changes is

now estimated to be significantly less than initially planned—about 1,600 inmates in 2009-10 and 11,800 inmates in 2010-11. This is primarily due to delays and changes in the implementation of the new policies. For example, the Governor’s budget assumes only 200 sentence commutations in 2009-10, which is significantly less than the 8,500 assumed in the enacted 2009-10 budget. As a result of these various changes, as well as the fact that the Legislature did not adopt sufficient statutory changes to allow a greater reduction in correctional populations, the Governor’s budget reflects that only about half of the \$1.2 billion in savings assumed in the enacted 2009-10 budget will be realized in the current year.

***Federal Court Orders Inmate Population Reduction.*** On January 12, 2010, a federal three-judge panel issued a ruling requiring the state to reduce its inmate population to 137.5 percent of design capacity—a reduction of roughly 40,000 inmates—within two years. However, the court stayed implementation of this court ruling pending the state’s appeal of the decision to the U.S. Supreme Court. The January 12 ruling does not specify the particular inmate population reduction measures that the state must implement. However, the court did require the administration to submit an inmate population reduction plan on November 19, 2009, and indicated in its January 12 ruling that the administration could implement the measures identified in the plan. This plan included the above policy changes that were adopted as part of the 2009-10 budget, as well as the Governor’s special session proposal to divert certain felons from prison to county jail. In addition, the plan submitted to the court included two other population reduction measures that are not part of the Governor’s budget pro-

posal for 2010-11—adjusting the dollar threshold for grand theft and releasing certain elderly and infirm inmates from prison and placing them on house arrest with Global Positioning System monitoring.

### **Governor’s Special Session Proposal Has Merit, but Some Shortcomings**

Under the Governor’s special session proposal, certain felonies that are eligible for incarceration in state prison would be converted to a felony conviction punishable by not more than 366 days in county jail. The affected specific felonies that would be converted, which are summarized in Figure 1, include various drug and property crimes, such as drug possession, receiving stolen property, and check fraud. All of these felonies 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. As indicated in the figure, the administration estimates that this proposal would reduce the average daily inmate population by about 15,100 inmates upon full implementation. (The list of affected crimes would be expanded under a “trigger” proposed as part of the Governor’s budget plan. If the federal government does not provide the \$6.9 billion in additional funds sought by the administration in order to reduce General Fund costs, various alternative revenue and expenditure reduction proposals would be triggered, including an expansion of this proposal to change state sentencing laws.)

As we discussed in our *2009-10 Budget Analysis Series: Judicial and Criminal Justice* (see page CJ-10), we have identified four primary criteria that we recommend the Legislature consider

when evaluating various correctional population reduction proposals:

- **Budget Savings.** What is the magnitude of savings that will be achieved? To what extent is the actual level of savings dependent on changes to department operations? How quickly will the savings level be achieved? Will savings be delayed because of implementation requirements?
- **Prison Overcrowding.** To what extent will the proposal reduce prison overcrowding? To what extent does the particular population reduction proposal result in ancillary benefits, such as avoiding the need to build additional prison bed capacity or improving prison operations?
- **Public Safety.** How will the proposal affect public safety? Can any negative impacts to public safety be mitigated?

- **Shift of Responsibilities to Local Governments.** Will the proposal increase local costs to incarcerate more offenders in county jails or supervise offenders on county probation? What impact will the proposal have on jail overcrowding?

Based on the above criteria, we analyze below the Governor’s special session proposal.

**Achieves Significant Savings, but Appears Overstated.** Our analysis indicates that the administration’s estimate that \$291.6 million in savings could be achieved in the budget year from the special session proposal may be somewhat overstated. This is because the savings estimate does not take into account the length of time it could take to lay off correctional staff who may no longer be needed due to a lower inmate population or the length of time to cancel contracts with private prison facilities and transfer inmates back to state-run institutions. The projected savings assume that the policy change would be implemented and operational by CDCR start-

**Figure 1**  
**Governor’s Special Session Proposal:**  
**Jail Time Instead of Prison for Specified Felonies**

(Dollars 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.

ing in June 2010 (three months after the end of the special session). However, it recently took the department, acting expeditiously, about six months to implement layoffs for teaching staff due to various requirements pertaining to the state's layoff process. Thus, we believe that, even under a best case scenario, savings would more likely be realized starting in September 2010.

In addition, the administration's savings estimate does not take into account the likely overlap with the savings with some of the other population reduction measures recently enacted as part of the 2009-10 budget. Moreover, certain unknown variables regarding the implementation of the measure (such as possible changes in prosecutorial behavior), could further affect the actual level of savings. In view of the above, we estimate that the Governor's proposal would save about \$5 million in 2009-10 (mostly in operating expenses and equipment) and about \$250 million in 2010-11—still a significant reduction in prison costs.

***Alleviates Prison Overcrowding and Possibly Reduces Construction Needs.*** When combined with the population reduction proposals approved as part of the 2009-10 budget, the Governor's special session proposal would substantially alleviate overcrowding in the prison system by reducing the inmate population by about 24,500 inmates in 2010-11. This would increase by a few thousand more inmates in future years. This would be lower than the 40,000-inmate population reduction that would be required under the ruling of the federal three-judge panel but would put the state closer to meeting that potential target. Moreover, it could reduce the need for the prison construction projects authorized in Chapter 7, Statutes of 2007 (AB 900, Solorio) to help alleviate the state's prison overcrowding problem. As a result, the state might be able to avoid increased General Fund costs in the hun-

dreds of millions of dollars to operate the new facilities, as well as pay the debt service for the lease-revenue bonds to construct them.

***Mitigates Some Impacts on Public Safety.***

While most prison population reduction proposals raise concerns because of the potential impact on public safety—mainly since inmates would no longer be incapacitated in state prison—the Governor's proposal helps alleviate some of these concerns. For example, the proposal would still allow for the incapacitation of these offenders—in county jail rather than state prison. In fact, since most of these offenders spend on average less than one year in prison, from a fiscal and facility management standpoint it appears more efficient and appropriate to house them in short-term county jail facilities. This would help prioritize limited prison resources for longer-term and more serious commitments. In addition, all of the crimes included in the Governor's proposal are so-called wobblers crimes that already may be tried by prosecutors as misdemeanors instead of felonies. As a result, many offenders convicted of such crimes are already sentenced to jail under current law. (In our *Analysis of the 2008-09 Budget Bill* [see page D-112], we suggested changing these wobbler crimes to be prosecuted only as misdemeanors to achieve significant state savings.)

***But Places Pressures on Local Governments.***

Currently, roughly half of all county jails in the state are under court-ordered or self-imposed population caps—resulting in many counties releasing certain inmates early due to lack of jail space. Thus, most county jails would not be able to house the additional offenders that they would be required to supervise under the Governor's proposal. In some instances, county jails would simply release other inmates early to “free up” limited jail beds for the new population. In 2007, over 200,000 jail inmates were released

early due to lack of space. While additional early releases would likely be limited to lower-level offenders who present the least risk to public safety, such releases raise some local public safety concerns. However, in the long run, these concerns could be addressed with \$1.2 billion that was allocated in AB 900 for the construction of 13,000 additional jail beds.

***And Could Have Unintended Consequences.*** Our analysis indicates that the administration's proposed budget trailer legislation to implement the special session proposal is worded in such a way that could result in some unintended consequences. This is because the proposed language appears to inadvertently affect offenders who have a prior serious or violent felony. Specifically, the language could be interpreted to mean that such offenders with prior records must now be convicted of a felony if they commit one of the crimes specified in the proposal. 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 these offenders are sentenced to state prison. In particular, they would be subject to a much longer prison sentence under the "Three Strikes and You're Out Law." However, based on our discussions with the administration, this is not the intention of the proposal.

### **LAO Recommendation: Approve Governor's Proposal With Modifications**

The Governor's special session proposal provides a reasonable starting point for the Legislature to consider making additional correctional population reductions a part of its approach to balancing the state budget. Specifically, the proposal would achieve significant savings and substantially alleviate inmate overcrowding, while still allowing for the incarceration of all offenders

convicted of the specified crimes. As a result, we recommend that the Legislature approve the Governor's proposal to redirect certain offenders from state prison to county jail. However, to address some of the shortcomings we have identified above, we recommend modifying the proposal in two ways we discuss below. In addition, given the state's fiscal condition, the Legislature may want to consider adopting additional population reduction measures.

***Allow Counties to Expand Use of Alternatives to Incarceration.*** Under current state law, a county board of supervisors may authorize a sheriff's department to release offenders who have been sentenced to jail on a misdemeanor offense early and place them on house arrest under electronic monitoring. Although state-wide data is not available on how often such an alternative custody program is used at the local level, our conversations with sheriff department officials indicate that it is a key tool for managing their overcrowded jail populations. More importantly, they believe that the program has not had a significant adverse impact on public safety and provides significant fiscal benefits for local governments. In order to further alleviate the impact of the Governor's proposal on county jails, we recommend that the Legislature adopt statutory language permitting counties to place additional jail inmates (such as those convicted of a felony) on electronic home monitoring in lieu of incarceration.

***Revise Savings Estimates and Proposed Statutory Language.*** In addition, we recommend that the Legislature reduce the assumed savings related to the proposal to a more realistic level of \$5 million in 2009-10 and \$250 million in 2010-11. We further recommend that the Legislature revise 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.

**Consider Additional Population Reduction Proposals.** Given the state's current General Fund shortfall, as well as the inability to fully meet the reduction target assumed in the 2009-10 budget for CDCR, we recommend the Legislature consider adopting additional inmate and parole population reduction measures. In recent years, our office has proposed a number of such measures for legislative consideration. (Please see our *2009-10 Budget Analysis Series: Judicial and Criminal Justice* for a comprehensive

list of the strategies available to reduce the state correctional population.) For example, we have recommended in the past the release of certain non-violent, elderly inmates from prison early since these inmates represent a low risk of reoffending yet cost two to three times as much to incarcerate as the average inmate. Although the federal three-judge panel's recent ruling would, if sustained, require a significant inmate population reduction, the Legislature could take steps now to ensure that it is done in a way that reflects legislative policies and priorities rather than those of the administration or the court.

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This report was prepared by Paul Golaszewski, and reviewed by Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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