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September 3, 1996

Hon. Daniel E. Lungren
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Kathleen F. DaRosa
Initiative Coordinator

Dear Attorney General Lungren:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the "Save Three Strikes Public Safety Act of 1998" as amended by proponents on August 8, 1996 (File No. SA 96 RF 0012—Amendment No. 1A). The initiative makes various statutory changes in the "Three Strikes and You're Out" law and other sentencing laws that, in general, would result in longer prison sentences for offenders who have committed multiple crimes or have prior felonies on their criminal record.

The primary provisions of the initiative and their fiscal implications are discussed below following a brief background explanation of relevant existing laws.

Background

Existing law, including the Three Strikes and You're Out laws enacted in two separate statutes by the Legislature and by voter-approved initiative in 1994, require substantially longer prison sentences for certain repeat offenders. Both measures require that a person who is convicted of a felony and who has been previously convicted of one or more violent or serious felonies defined by law, be sentenced as follows:

- If the person has one previous serious or violent felony conviction on his or her criminal record, the mandatory 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. In general, each new prison sentence must be served back-to-back.

- If the person has two or more previous serious or violent felony convictions on his or her record, the mandatory sentence for any new felony conviction (not just a serious or violent felony) is life imprisonment with the minimum term being the *greatest* of (1) three times the term otherwise required under law for the new felony conviction, (2) 25 years, or (3) the term determined by the court for the new conviction.

Both measures allow an offender sentenced under the Three Strikes law to earn credits to reduce the time he or she spends in prison for the new offense by up to one-fifth of their sentence, rather than the previous maximum of one-half of their sentence.

Existing law, as interpreted by the courts, also provides that criminal offenders, including "three strikers," may earn "good conduct" credits during the time they spend in county jail before they are sent to state prison. An inmate may earn up to one day off his or her sentence for each three days spent in jail.

Generally, existing statutory law, as interpreted by the courts, grants judges the power in criminal cases to modify the charges filed by prosecutors against an offender, thereby reducing the penalty otherwise provided for a convicted offender. The California Supreme Court has recently ruled that judges have the same legal authority to so modify the charges filed against offenders in Three Strikes cases.

In some cases, a single criminal act may be subject to punishment under more than one provision of state law. For example, someone charged with carjacking could also be charged with robbery. Existing law provides that, in such a case, the offender convicted for the crime may receive the punishment for carjacking, or the punishment for robbery, but not punishment for both.

Proposal

This initiative repeals the legislative version of the Three Strikes law, makes a series of changes to the Three Strikes statute adopted by the voters through the initiative process, and changes other sections of the Penal Code that do not directly relate to Three Strikes cases but that more broadly affect the sentencing of criminal offenders. In gen-

eral, the initiative would result in longer prison sentences for offenders who have committed multiple crimes or who have prior felonies on their record.

Many provisions of the initiative would modify or overturn state appellate court and California Supreme Court rulings which interpret these existing statutes, including some cases that are still on appeal and thus are not finally resolved by the courts. The most significant of the numerous statutory changes made by this measure are discussed below.

Three Strikes Law Revisions. The initiative would specifically amend the Three Strikes law to:

- Limit the authority of judges to reduce the sentences otherwise provided for Three Strikes offenders. In general, a judge could reduce such an offender's sentence *only* if the offender (1) had never committed a violent felony, (2) had not been convicted of a serious felony within the last ten years and had not been in custody following conviction for a serious felony within the last ten years, and (3) is not currently charged with a violent or serious crime. The measure also specifies that a prosecuting attorney may decide not to consider one or more prior convictions that would trigger a Three Strikes sentence, but provides that a Three Strikes allegation can only be dropped under circumstances specified in the initiative.

- Limit the good conduct credits that may be earned by Three Strikes offenders during the time they spend in county jail before being transferred to state prison. Such offenders could reduce the time they must serve in prison by up to one-fifth—the same credits available while in prison. They would no longer be eligible to earn credits to reduce their prison time by one day for every three days spent in jail.

- Ensure that adjudications for violent or serious crimes committed by an offender while he or she was a juvenile can later be used as a basis for Three Strikes charges against an adult offender who has committed a new crime.

- Ensure that Three Strikes offenders who have been convicted of two or more new crimes must serve the separate sentence received for each crime back-to-back, rather than concurrently. This provision applies to offenders with two or more violent or serious prior convictions and who have a new conviction for multiple crimes that were committed at the same time.

- Limit the cases in which defendants may file motions to legally challenge the validity of prior convictions that are alleged by prosecutors in Three Strikes cases. The initiative bars such legal challenges unless (1) the case involves murder charges for which the death penalty is being sought or (2) the defendant proves that his or her attorney was not licensed to practice law or was not present when their guilt or sentence was determined.

This initiative also makes other statutory changes to the existing Three Strikes law in order to (1) ensure that serious and violent offenses committed in other states count as prior convictions, thereby resulting in additional punishment; (2) impose longer sentences under certain circumstances pertaining to the crime, as when an offender used a gun; (3) prohibit diversion of Three Strikes offenders to drug-treatment programs; and (4) eliminate a potential conflict between the Three Strikes and the state's capital punishment law.

Revisions in Other Criminal Statutes. In addition to revising the Three Strikes and You're Out law, this initiative revises various other sections of the Penal Code which affect the sentencing of both Three Strikes and non-Three Strikes felons. For example, the initiative affects cases in which a criminal committed a single criminal act that may be subject to punishment under more than one provision of state law. Existing law provides that, in such a case, the offender may receive the punishment for one crime, or the other, but not both. The initiative would require that, in such cases, the judge must sentence the offender for the crime with the longest potential term of imprisonment.

Among other provisions, the initiative (1) prohibits judges from striking or dismissing the language from any criminal charge when the effect is to reduce it to a lesser charge and (2) permits judges to impose multiple sentences upon offenders as punishment for multiple criminal acts that were all committed with the same criminal intent or objective.

Fiscal Effect

This measure will result in a number of fiscal effects on state and local governments. Some provisions of this initiative appear likely to have only a minor fiscal effect because they conform closely to existing sentencing practices and case law, while others make a substantive change in the law that is likely to affect only a few criminal cases. Because this measure addresses a number of legal issues regarding the interpretation of the Three Strikes law and other criminal statutes that are still pending before the state appellate courts and the California Supreme Court, our conclusion that these provisions have only a minor fiscal effect could change at a later date.

Based on our review, we conclude that some provisions of the initiative would result in a number of major fiscal effects as discussed below.

Prison Operations and Construction Costs. This measure would likely result in offenders spending more time in state prison, which would, in turn, result in a major increase in the state prison population. Consequently, the net state cost of operating prisons would likely increase by at least $35 million annually within five years after enactment of this measure. Within 25 years after passage of the initiative, those operating costs would likely increase by at least $140 million annually.

Because of the increase in the state prison population, the state would also incur major one-time capital outlay costs for construction of additional prison space. Those costs would be at least $85 million within five years after the enactment of this measure, and would probably exceed $335 million within 25 years after its passage.

The main reasons for the increases in prison population, and therefore increased costs, are the provisions which (1) limit the authority of judges to reduce sentences of Three Strikes offenders, (2) limit the good conduct jail credits earned by Three Strikes offenders, and (3) ensure that serious or violent juvenile offenses are counted as prior felonies in Three Strikes cases.

The initiative provision mandating consecutive (back-to-back) sentences for certain Three Strike offenders who had committed multiple crimes will result in major state costs, but to a lesser degree than the factors cited above. That is also the case for the initiative provision that generally permits judges to impose multiple sentences upon offenders as punishment for multiple criminal acts that were all committed with the same criminal intent or objective. Along with the three main factors cited above, these provisions increase the number of offenders subject to receiving Three Strikes sentences and lengthen the actual sentences those offenders must serve under the Three Strikes law.

Criminal Justice System Costs. This measure would likely result in major costs to criminal justice agencies, probably at least several million dollars annually, relatively soon after the passage of this measure. The reasons for these increased costs are discussed below.

Offenders affected by the measure would be faced with long mandatory prison terms, and thus some offenders would be more likely to contest their cases in a jury trial. Since most criminal cases are disposed of without criminal trials, an increased number of trials would result in additional costs for county governments and for the

state government for adjudication of these cases by the courts, district attorneys, and court-appointed counsel or public defenders. Moreover, in some jurisdictions, the initiative may result in prosecutors filing Three Strikes allegations they currently are declining to prosecute.

Potential Savings. Various provisions of this measure could result in savings to the state prison and criminal justice systems that could partly offset the costs described above. The magnitude of these savings is unknown. The offsetting savings would result to the extent that:

- The threat of harsher penalties deters offenders from committing multiple or repeat offenses.
- The longer prison sentences resulting from this measure have the effect of incapacitating offenders who would otherwise have committed additional crimes, gone to trial, and been returned to prison for new offenses.
- Prosecuting attorneys exercise the explicit authority granted them by the measure to not pursue Three Strikes sentences against defendants and to instead file cases that would result in a lesser prison sentence.
- The stiffer criminal penalties resulting from the initiative encourage some offenders to reach agreements with prosecutors to avoid the longer sentences resulting from this initiative.
- The initiative resolves outstanding legal issues over the interpretation of the Three Strikes law.
- The initiative restricts Three Strikes defendants from filing and obtaining hearings on motions to challenge the validity of their prior convictions, a legal change that could shorten criminal trials of some Three Strikes defendants.

Summary of Fiscal Effects

In summary, the initiative would likely result in major costs to operate the state prison system of at least $35 million annually within five years and at least $140 million annually within 25 years of its enactment. The state would also be likely to incur major one-time capital outlay costs for construction of additional prison space of at least $85 million within five years and probably exceed $335 million within 25 years after its passage. This measure would likely result in major costs to the criminal justice system,

probably amounting to at least several million dollars annually relatively soon after its passage. Both the state and county government costs would be partially offset by unknown savings from other factors, including the discretion provided to prosecuting attorneys not to pursue Three Strikes cases and the effect the longer sentencing of offenders may have on deterring and incapacitating criminals who would otherwise commit new crimes and return to prison for new offenses.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Craig L. Brown
Director of Finance