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December 6, 1999

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Diane Calkins
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the "Substance Abuse and Crime Prevention Act of 2000 (Version A)" (File No. SA 1999 RF 0038, Amendment No. 2-NS).

BACKGROUND

Three Types of Crimes. Under current state law, there are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime and can result in a sentence in prison or jail, a fine, or supervision on probation in the community. Misdemeanors are considered less serious and can result in a jail term, probation, a fine, or release to the community without probation but with certain conditions imposed by the court.

State law generally makes it a crime to illegally possess, use, or be under the influence of specific drugs, including marijuana, cocaine, heroin, or methamphetamine, as well as certain medicines obtained without a physician's prescription. Some drug-related offenses are classified as felonies and some as misdemeanors. Whether a drug-

related crime is classified as a felony or misdemeanor, as well as the punishment imposed upon conviction, depends primarily upon the specific substance found to be in the possession of an offender.

State law differentiates between felons who are convicted of possessing illegal drugs for personal use and those convicted of possessing illegal drugs for the purposes of selling them to another party.

Violent and Serious Felonies. Existing law classifies some felonies as “violent” or “serious.” Currently, felonies defined as violent include murder, robbery of a residence in which a deadly or dangerous weapon is used, rape, and other sex offenses. Felonies defined as serious include the same offenses defined as violent felonies, but also include other offenses such as the burglary of a residence. Other felonies, including felony drug possession, are classified as neither violent nor serious.

“Three Strikes” Law. In 1994, a statute approved by the Legislature and an initiative approved by the voters both separately enacted nearly identical versions of the so-called “Three Strikes and You’re Out” law. The Three Strikes measure imposed longer prison sentences on an offender who had prior convictions for crimes classified as either violent or serious.

If the offender has *one* previous serious or violent felony conviction on his or her criminal record, the mandatory prison sentence upon conviction for *any* new felony is *twice* the term otherwise required by law for the new conviction. If the offender has *two or more* previous serious or violent felony convictions on his or her criminal record, the mandatory prison sentence upon conviction for *any* new felony is *at least 25 years to life*. Offenders convicted of a drug possession felony are subject to sentencing under the Three Strikes law if there are violent or serious prior convictions on their record.

Parole Violators. Nearly all offenders sentenced to prison are required to serve a period of time under supervision of state parole agents following their release from prison to the community. Offenders who did not commit a violent crime, such as those imprisoned for felony drug possession, are subject to three years of parole supervision but can be discharged from parole after one year if they have committed no parole violations.

A parolee who has been found to have committed a new crime while on parole, such as using or possessing an illegal drug, is subject to punishment in one of two ways. Such a parolee could be prosecuted on new criminal charges in the courts and possibly returned to prison with a new sentence. Such a parolee could also have his or her parole

revoked and be returned to prison for up to a year through an administrative action of the Board of Prison Terms.

Asset Forfeiture Law. State law authorizes both state and local government agencies with court approval to seize and dispose of assets such as cash, buildings, airplanes, or automobiles used in the commission of a wide range of crimes, but most commonly in drug-trafficking cases. This property is to be sold and the proceeds distributed in accordance with state law, which allocates funds to various state and local law enforcement agency activities, criminal prosecutors, and the state General Fund. State law provides for the reimbursement of innocent parties with a financial interest in assets that have been seized and sold because of their use in criminal activity. Federal government agencies are similarly authorized to seize and dispose of assets involved in criminal enterprises and to share the proceeds with state and local law enforcement agencies for specified purposes.

State law authorizes state and local government agencies to seize and dispose of assets in other situations. These situations include when someone is delinquent in paying income, sales, and property taxes.

PROPOSAL

Changes in Sentencing Law. This measure modifies state sentencing laws effective July 1, 2001, so that an offender convicted of a nonviolent drug possession offense would generally be sentenced to county probation supervision and participation in a drug treatment program and would no longer be subject to incarceration in state prison or county jail.

The measure would apply in cases of felony or misdemeanor criminal charges for being under the influence of illegal drugs or possession of illegal drugs for personal use. It would not apply in cases involving possession for sale, production, or manufacturing of illegal drugs.

Drug Programs Specified. The measure specifies the various types of drug programs to which a convicted offender could be assigned by the court for up to one year with six additional months of aftercare. Participation in vocational training, family counseling, and literacy training could also be required. The measure requires that offenders who are reasonably able to do so help pay for their own drug treatment.

Offenders who successfully completed treatment and complied with their conditions of probation could petition the court for dismissal of the charges and to have that arrest

deemed removed from their criminal record. Offenders who failed to comply with their drug treatment requirements or conditions of probation or who committed new crimes would be subject to various specified sanctions by the court, including in some cases incarceration in jail or prison.

Some Offenders Excluded. This measure specifies that certain offenders would be excluded from its provisions and thus would be subject to sentencing under existing criminal laws. Among those excluded are any offender who refused drug treatment, who used a firearm during his or her crime, or who was convicted in the same court proceeding of another crime. An offender who has repeatedly failed the drug treatment programs mandated under this measure would be excluded and sentenced to 30 days in jail.

Some offenders now subject to mandatory, longer prison sentences under the Three Strikes law would instead be sentenced under this measure to probation and drug treatment. To qualify for such a lesser sentence, the offender may not have been in prison or jail in the preceding five years. The offender also must be free of any conviction in the past five years for a felony other than drug possession or of a conviction for any misdemeanor involving injury or threat of injury to another person.

Parole Violators Diverted. Effective July 1, 2001, parole violators found to have committed a nonviolent drug possession offense or to have violated any drug-related condition of parole would generally remain on parole supervision and be placed in a county-established drug treatment program. The parolee would not be subject to reincarceration in state prison for the parole violation.

This initiative specifies that its provisions for diversion from prison would not apply to certain parolees, thus making them subject to imprisonment for parole violations in accordance with existing law. The excluded parolees are any who refuse drug treatment, who are found to have also committed another crime, or who had a prior conviction on their record for a crime classified as either violent or serious. Parolees who failed to comply with their drug treatment requirements or conditions of parole or who committed new crimes would be subject to various specified sanctions, including in some cases reincarceration in state prison.

Allocation of State Funds. The measure provides additional funding to counties to support the proposed expansion of drug treatment and probation supervision for non-violent drug possession offenders and related costs. After providing \$60 million in 2000-01, \$120 million would be appropriated annually through 2005-06 for these purposes to a Substance Abuse Treatment Trust Fund created by this measure.

The initiative directs that the funds be distributed to counties through the state Department of Alcohol and Drug Programs (DADP) through a formula tied to specified factors. The funds received by counties could not be used for any other purposes but those specified in the initiative, and none of the funds could be used for drug testing of offenders. The DADP would be authorized to directly contract for additional drug treatment whenever it determines that existing services are insufficient.

Transfer of Asset Forfeiture Proceeds. The initiative provides that the proceeds from the sale of assets seized by state or local government entities shall be deposited in the Substance Abuse Treatment Trust Fund.

Any asset forfeiture proceeds shared by the federal government with any state or local government would also be transferred to the trust fund. Individuals as well as state or local prosecutors could file suit to compel the fund transfers and receive a share of any funds found to have been misappropriated. This measure would make it a crime, subject to punishment by jail and fines, for any public official to fail to comply with the transfer provisions.

The asset forfeiture proceeds transferred under this measure are now used, among other purposes, for police equipment purchases, community drug awareness education, gang diversion programs, state and local prosecutors, and the support of various state government programs.

Federal guidelines for the use of asset forfeiture proceeds limit which agencies are eligible to receive asset forfeiture proceeds and the specific uses of such funds and thus could potentially conflict with the requirements of this initiative that such proceeds be transferred to the trust fund. Federal authorities could choose to waive those guidelines and permit the funds to be transferred, or could choose instead to stop sharing asset forfeiture proceeds with state and local law enforcement agencies in California.

Evaluation, Reports, and Audits. The initiative directs DADP to study the effectiveness and fiscal impact of the measure with the help of a California public university using part of the funds allocated in this measure to the Substance Abuse Treatment Trust Fund. County governments would be directed to report specified information on the conduct of the drug treatment programs to DADP, and their expenditures would be subject to audits by the department.

FISCAL EFFECT

This measure would have significant fiscal effects upon both state and local governments. The major effects are discussed below.

State Prison System. The state's prison system will grow significantly more slowly in the future than would otherwise be the case if this initiative were enacted. That is because as many as 25,000 nonviolent drug possession offenders per year, including both offenders sentenced by the courts and parole violators subject to administrative action by the Board of Prison Terms, would be diverted to drug treatment in the community instead of being sent to state prison. These savings on prison operation and construction costs would be partly offset to the extent that the offenders diverted to the community under this measure subsequently committed additional crimes that resulted in their commitment to state prison by the courts or by the Board of Prison Terms.

Taking these and other factors into account, we estimate that between 10,000 and 12,000 fewer prison beds would be needed at any given time and state prison operating costs would be reduced by between \$200 million and \$250 million annually within several years after its passage. The state would also be able to delay the construction of additional prison space for a one-time avoidance of long-term capital outlay costs of between \$475 million and \$575 million.

State Parole System. This measure would divert a significant number of offenders from entering state custody as prison inmates. Thus, fewer offenders would eventually be released from state prison to state parole supervision, resulting in a savings to the state.

Taking these and other factors into account, we estimate that the initiative would result in a net caseload reduction of 9,500 parolees and a net state savings of about \$20 million annually for parole operations within several years after its passage.

County Jails. We estimate that the provisions in this measure barring jail terms for nonviolent drug possession offenses would divert about 12,000 eligible offenders annually from short-term jail sentences to probation supervision and drug treatment in the community. County jail operating costs would increase, however, to the extent that offenders diverted to the community under this initiative were placed in county jail custody after subsequently committing other crimes or failing to complete the drug treatment programs to which they were sentenced.

Taking these and other factors into account, we estimate that about 2,800 fewer jail beds would be needed at any given time, resulting in about \$50 million annual net savings to county governments on a statewide basis, within several years after passage of the initiative. These savings would decline to the extent that jail beds no longer needed for drug possession offenders were used for other criminals.

Treatment Trust Fund. This measure appropriates \$60 million from the state General Fund for the 2000-01 fiscal year, and \$120 million each year thereafter concluding with the 2005-06 fiscal year, to a Substance Abuse Treatment Trust Fund. After 2005-06, funding contributions from the General Fund to the trust fund would be subject to annual determination by the Legislature and Governor.

The provisions affecting asset forfeiture proceeds could additionally result in the transfer of as much as \$71 million annually to the trust fund. This includes about \$10 million in proceeds from asset forfeitures redirected from state government and about \$61 million from local government.

The actual amounts transferred could be less, depending upon the extent to which this initiative decreased the financial incentive for state and local government agencies to carry out asset forfeitures and to apply for federal grants of asset forfeiture proceeds. Also, the funding transferred to the trust fund would be reduced by as much as \$32 million if conflicts with federal guidelines halted the sharing of federal asset forfeiture proceeds with state and local government law enforcement agencies in California.

The money placed in the trust fund would be allocated each year to county governments to offset the costs of implementing this measure, including increased probation caseloads, substance abuse treatment, family counseling and literacy training programs, court monitoring of probationers, and compliance with the state reporting requirements.

Fees Paid by Offenders. This measure authorizes the courts and the Board of Prison Terms to require eligible offenders to contribute to the cost of the drug treatment programs. The exact revenues generated from charging such fees to offenders are unknown but would probably amount to several million dollars annually on a statewide basis within several years after passage of the initiative.

Trial Court Impacts. This measure would probably result in significant ongoing annual savings for the court system because fewer criminal cases would be contested at trial. With incarceration for their offenses prohibited, more offenders facing nonviolent drug possession charges would be likely to plead guilty and fewer would contest those

charges at trial. The combined savings to the state and county governments for trial court, prosecution, and indigent defense counsel costs would probably amount to several million dollars annually on a statewide basis within several years after passage of the initiative. However, the savings to the state could potentially be offset by an unknown amount to the extent that there are additional costs for the courts to monitor diverted offenders.

Summary of Fiscal Effects

This measure is likely to result in net savings to the state that probably range between \$100 million and \$150 million annually for lower costs for prison operations with a one-time avoidance of capital outlay costs of between \$475 million and \$575 million for prison construction. Counties would probably experience net savings of about \$50 million annually due primarily to a lower jail population.

This measure would also likely result in the transfer to a state trust fund, and the subsequent reallocation to counties, of as much as \$71 million annually in asset forfeiture proceeds. About \$10 million in asset forfeiture proceeds could be transferred from the state and as much as \$61 million could be diverted from counties, cities, special districts, and school districts.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance