

October 2, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to felony sentencing (A.G. File No. 15-0048).

Background

There are three types of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as violent include murder, rape, and burglary of an occupied residence. While almost all violent felonies are also considered serious, other felonies are defined only as serious, such as burglary of an unoccupied residence. Felonies that are not classified as violent or serious include grand theft (not involving a firearm) and sale of illegal drugs.

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. Offenders who are released from prison after serving a sentence for a serious or violent felony are supervised in the community by state parole agents. Offenders who are released from prison after serving a sentence for a felony that is not a serious or violent crime are usually supervised in the community by county probation officers.
- ***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 in the community by a county probation officer, or both. In addition, depending on the discretion of the judge and what crime was committed, some offenders who have current or prior convictions for serious, violent, or sex offenses can receive similar sentences.

Three Strikes Sentencing. In 1994, the California Legislature and voters (with the passage of Proposition 184) changed the state’s criminal sentencing law to impose longer prison sentences

for certain repeat offenders (commonly referred to as the “three strikes” law). Proposition 36, approved by voters in 2012, narrowed the type of repeat offenders subject to some of these longer sentences. Specifically, current law requires that a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- ***Second Strike Offense.*** If the offender has *one previous* serious or violent felony conviction, the 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. An offender with *two or more previous* serious or violent felony convictions can also be subject to a similar sentence if his or her new offense is a non-serious and nonviolent felony and he or she has not committed certain new or prior offenses, such as some drug-, sex-, and gun-related felonies. Offenders sentenced by the courts under these provisions are referred to as “second strikers.”
- ***Third Strike Offense.*** If the offender has *two or more previous* serious or violent felony convictions, the sentence for *any new serious or violent* felony conviction is a life term with the earliest possible parole after 25 years. In addition, an offender with *two or more previous* serious or violent offenses who commits *any new* felony (not just a serious or violent felony) can be similarly sentenced to a life term if he or she has committed certain new or prior offenses, such as some drug-, sex-, and gun-related felonies. Offenders convicted under these provisions are referred to as “third strikers.”

The above sentence enhancements are applicable regardless of when the prior offenses occurred (including crimes committed before the implementation of the three strikes law in 1994). While the law requires the sentences described above, in some instances the court may choose not to consider prior felonies during sentencing. When this occurs, an offender who would otherwise be sentenced as a second or third striker would be sentenced to a lesser term than required under the three strikes law.

Prison Release Determination. Under current law, most second strikers are automatically released from prison after completing their sentences. In contrast, third strikers are only released upon approval by the state Board of Parole Hearings (BPH). After third strikers have served the minimum number of years required by their sentence, a BPH panel conducts a parole consideration hearing to consider their possible release. For example, BPH would conduct such a hearing for a third striker sentenced to 25-years-to-life after the third striker served 25 years. If BPH decides not to release the third striker at that hearing, the board would conduct subsequent hearings until the offender is released or dies in prison.

Proposal

The measure makes several changes to the state’s existing three strikes law. For example, the measure allows the resentencing of certain third strikers who are currently serving life sentences. We discuss these and other changes below.

Resentencing of Certain Current Third Strikers. This measure allows some third strikers to apply to be resentenced by the courts if they meet certain requirements. For example, inmates whose current conviction is not for a serious or violent offense and is not for one of several specified drug, sex, and gun crimes (such as rape or selling more than one kilogram of heroin, cocaine, or methamphetamine) would be eligible for a resentencing hearing. In addition, given the way that the measure is written, it could be interpreted by the courts to allow for resentencing hearings for offenders whose current conviction is for a serious or violent offense, so long as their prior serious and violent convictions occurred before the implementation of the state's three strikes law.

The measure specifies the conditions under which the court would be required to resentence eligible offenders, such as whether the offender is likely to commit a specified severe crime—including murder and certain sex crimes. However, the way the measure is written, it could be subject to various interpretations by the courts. The measure requires that courts complete the resentencing process of qualified individuals within 180 days of receiving an application. Under the measure, resentenced offenders would receive twice the usual term for their most recent offense instead of the sentence previously imposed. Offenders whose requests for resentencing are denied by the courts would continue to serve out their life terms as they were originally sentenced.

Other Provisions. Under the measure, serious and violent felonies committed before the implementation of the three strikes law would no longer be considered when courts are deciding whether to sentence an offender as a second or third striker. In addition, the measure removes certain felonies from the list of crimes that are considered serious under state law. Specifically, under the measure, burglary of an unoccupied residence and making criminal threats of violence would no longer be considered serious felonies. The measure also requires that rehabilitation programs (such as academic and vocational education and substance use treatment services) be made available to all state prison inmates.

Fiscal Effects

State Correctional Savings. This measure would have a number of fiscal impacts on the state's correctional system. Most significantly, the measure would reduce the state prison population in three ways. First, removing certain felonies from the list of crimes that are considered serious would reduce the prison population in various ways. For example, offenders who either (1) have a prior conviction for one of these crimes or (2) commit one of these crimes in the future would generally be subject to shorter prison sentences. In addition, many of these offenders would serve their sentences in county jail or on community supervision instead of in state prison. Second, the resentencing of third strikers could result in many existing inmates receiving shorter prison terms. Third, excluding serious and violent felonies committed before the implementation of the three strikes law from counting as prior strikes would generally result in shorter sentences for offenders who have committed such past crimes and then commit future felonies.

The measure would also result in reduced state parole costs. This is because offenders who are sentenced to prison for crimes that would no longer be considered serious under the measure

would be supervised by county probation—rather than state parole—following their release from prison. In addition, the reduction in the third striker population would reduce the number of parole consideration hearings BPH would need to conduct in the future.

The above savings could be partially offset by increased costs to make rehabilitation programs available to all inmates, as required under the measure. The actual fiscal impact of this requirement would depend on how this requirement is implemented by the state. The overall net fiscal effect from the above changes could vary significantly depending on how the provisions of the measure are interpreted by the courts and implemented by the state. In total, we estimate that the measure could result in net state savings ranging from the low- to mid-hundreds of millions of dollars annually.

County Correctional Costs. This measure would result in increased correctional costs to counties. This is because many offenders who have current or prior convictions for felonies that would no longer be considered serious crimes under the measure would serve their sentences in county jails or on county probation, rather than in state prison. In addition, as mentioned above, certain offenders who either (1) are currently in prison for such crimes or (2) are sentenced to prison for committing such crimes in the future would be supervised by county probation—rather than state parole—following their release from prison. In total, these county costs could exceed one hundred million dollars annually.

Other Fiscal Impacts. This measure would result in a one-time cost to the state and counties related to the resentencing provisions of this measure. These provisions would increase court caseloads, which would result in added costs for district attorneys, public defenders, and county sheriff's departments that would manage this workload and staff these resentencing proceedings. In addition, counties would incur jail costs to house inmates during resentencing proceedings. These costs could be several million dollars statewide over the first year following implementation of the measure.

This measure could also result in a variety of other state and local government fiscal effects. For instance, governments would incur additional costs to the extent that offenders released from prison because of this measure require government services (such as government-paid health care for persons without private insurance coverage) or commit additional crimes. There also would be some additional state and local government revenue to the extent that offenders released from prison because of this measure entered the workforce. The magnitude of these impacts is unknown.

Summary of Fiscal Effects. This measure would have the following major fiscal effects:

- Net state savings related to prison and parole operations that would likely range from the low- to mid-hundreds of millions of dollars annually.

- Increased county costs that could exceed one hundred million dollars annually, primarily due to increased county jail and community supervision operations.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance