

December 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. 15-0084, Amendment No. 1).

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. 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 excludes certain crimes from the three strikes law and allows the resentencing of certain second and third strikers. We discuss these and other changes below.

Excludes Certain Crimes From Three Strikes Law. 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 making criminal threats of violence from the list of felonies that are considered serious, and therefore treated as strikes, under state law.

Resentencing of Certain Current Second and Third Strikers. This measure allows some second and third strikers to be resentenced to shorter terms by the courts if their crimes fall into the above categories. However, the way the measure is written, it could be subject to various interpretations by the courts. For example, the courts could interpret the measure to allow for the resentencing of *any* second or third striker who would have received a reduced sentence had the measure been in place when they were convicted, unless they had previously committed certain specified sex crimes. The measure requires that courts complete the resentencing process of qualified individuals within 180 days of receiving an application. Under the measure, resentenced second strikers would serve shorter terms because they would no longer be required to serve twice the term for their current offense. In addition, resentenced third strikers would generally receive twice the usual term for their most recent offense instead of the sentence previously imposed.

Funding for Various Programs. The measure requires that savings to the state from its implementation, as estimated by the Department of Finance, be annually transferred from the General Fund into a new state fund—the Three Strikes Reform Act of 2016 Fund. Under the measure, the monies in the fund would be allocated equally to: (1) high poverty middle and high schools, (2) state community colleges to offset tuition, (3) the universities of California to offset tuition, and (4) prison rehabilitation programs.

Fiscal Effects

State Effects of Sentencing Change. This measure would have a number of fiscal impacts on the state's prison system. Most significantly, the measure would reduce the state prison population in three ways. First, removing the crime of making criminal threats of violence from the list of felonies that are considered serious would reduce the prison population in various ways. For example, offenders who either (1) have a prior conviction for such a crime or (2) commit such a crime 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 second and 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 being treated 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. Finally, the measure

would result in a one-time cost to the state courts related to its resentencing provisions. These provisions would increase court caseloads, which would result in added costs for trial courts that would conduct these resentencing proceedings.

In total, we estimate that the effects described above could eventually result in net state criminal justice system savings of up to several hundred million dollars annually in the first few years following the implementation of the measure and up to the low hundreds of millions of dollars annually thereafter. As noted earlier, any state savings would be deposited in the Three Strikes Reform Act of 2016 Fund and allocated for various purposes specified in the measure.

County Effects of Sentencing Changes. This measure would result in increased jail and probation costs to counties. This is because many offenders who have current or prior convictions for making criminal threats of violence, which would no longer be considered a serious felony 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.

This measure would also result in a one-time cost to the counties related to its resentencing provisions. Specifically, these provisions result in added costs for district attorneys, public defenders, and county sheriffs' departments that would manage and staff these resentencing proceedings. In addition, counties would incur jail costs to house inmates during resentencing proceedings. In total, we estimate that the measure could result in net criminal justice system costs to the counties in the low tens of millions of dollars annually, primarily due to increased county jail and community supervision operations.

Other Fiscal Effects. Under the measure, a portion of the above state savings would be used to provide additional funding for rehabilitation programs designed to keep offenders out of prison and jail. If such funding increased participation in these programs and made participants less likely to commit future crimes, the measure could result in future additional savings to the state and counties. 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. We estimate that this measure would have the following major fiscal effects:

- Net state criminal justice system savings that could be up to several hundred million dollars annually in the first few years following its implementation and up to the low hundreds of millions of dollars annually thereafter. These savings would be spent on high poverty middle and high schools, tuition reduction at institutions of higher education, and prison rehabilitation programs.
- Increased county costs that could reach into the low tens of millions of dollars annually, primarily due to increased county jail and community supervision operations.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance